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**Vol. I.**

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Sub Ct.

**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1940**

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**No. 281**

**WEIGHTSTILL WOODS, COURT TRUSTEE,  
PETITIONER,**

*vs.*

**CITY NATIONAL BANK AND TRUST CO., OF  
CHICAGO, ET AL.**

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**No. 282**

**WEIGHTSTILL WOODS, COURT TRUSTEE,  
PETITIONER,**

*vs.*

**CITY NATIONAL BANK AND TRUST CO., OF  
CHICAGO, ET AL.**

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**ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SEVENTH CIRCUIT**

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**PETITION FOR CERTIORARI FILED JULY 25, 1940.**

**CERTIORARI GRANTED JULY 27, 1940.**

**OCT 14 1940**

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, A. D. 1940.

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No. \_\_\_\_\_

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IN THE MATTER OF GRANADA APARTMENTS, INC.,  
A CORPORATION, DEBTOR.

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WEIGHTSTILL WOODS, COURT TRUSTEE, ET AL.,  
*Petitioners,*  
vs.

CITY NATIONAL BANK & TRUST COMPANY OF  
CHICAGO, ETC., ET AL.,  
*Respondents.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SEVENTH CIRCUIT.

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IN THE  
**United States Circuit Court of Appeals**  
**For the Seventh Circuit**

Nos. 6986 and 7060

IN THE MATTER OF GRANADA APARTMENTS, INC.,  
A CORPORATION, DEBTOR.

CITY NATIONAL BANK & TRUST COMPANY OF  
CHICAGO, ETC., ET AL.,

*Appellants,*

*vs.*

WEIGHTSTILL WOODS, COURT TRUSTEE, ET AL.,  
*Appellees.*

*Counsel for Appellants:*

MR. VINCENT O'BRIEN,  
MR. JOHN MERRILL BAKER,  
MR. TRACY WILSON BUCKINGHAM.

*Counsel for Appellees:*

MR. WEIGHTSTILL WOODS.

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1      Pleas in the District Court of the United States for <sup>Placita.</sup>  
the Northern District of Illinois, Eastern Division,  
begun and held at the United States Court Room, in the  
City of Chicago, in said District and Division, before the  
Honorable John P. Barnes, District Judge of the United  
States for the Northern District of Illinois on Second-day  
of May, in the year of our Lord one thousand nine hun-  
dred and Thirty-Nine, being one of the days of the regu-  
lar May Term of said Court, begun Monday, the First  
day of May, and of our Independence the 163rd year.

Present:

Honorable John P. Barnes, District Judge.  
William H. McDonnell, U. S. Marshal.  
Hoyt King, Clerk.

Entered  
May 17,  
1937.

33 And afterwards, to wit, on the 17th day of May, A. D. 1937, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

34 IN THE DISTRICT COURT OF THE UNITED STATES,

For the Northern District of Illinois,

Eastern Division.

In the Matter of  
Granada Apartments, Inc., an  
Illinois corporation,  
Debtor.

No. 65811.  
No. 3008-D.  
In Proceedings for  
Reorganization Un-  
der Section 77-B of  
the Bankruptcy Act.

### ORDER.

This cause now coming on to be heard upon the motion of Mort D. & Frank Goldberg, attorneys for the Granada Apartments, Inc., debtor herein, for the entry of an order finding its petition for reorganization under Section 77B in case No. 65811 filed in good faith and as properly filed; and the court having heard testimony in open court and now being satisfied that said voluntary petition for reorganization complies with the provisions of Sections 77A and 77B of the Bankruptcy Act of 1898, as amended and supplemented, and that the same has been filed in good faith and the Court now being fully advised in the premises,

It Is Ordered, Adjudged and Decreed that the voluntary petition for reorganization of the Granada Apartments, Inc., an Illinois corporation, filed on April 23, 1937, be and the same is hereby approved as properly filed and as having been filed in good faith.

And this cause now coming on to be heard upon the motion of the solicitors for petitioning creditors in the matter of the involuntary petition for reorganization of the Granada Apartments, Inc., filed in Cause No. 3008-D at Danville, Illinois on April 19, 1937 and the court having considered said involuntary petition for reorganiza-

tion and having heard testimony thereon and now being fully advised in the premises, doth order that the involuntary petition for reorganization of the Granada Apartments, Inc., an Illinois corporation filed on April 19, 1937, be and the same is hereby approved as properly filed and as filed in good faith under Sections 77A and 77B of the Bankruptcy Act as amended and supplemented.

It Is Further Ordered by this court that the voluntary petition filed as Cause No. 65811 in the District Court of the United States, for the Northern District of Illinois, Eastern Division and the involuntary petition filed as Cause No. 3008-D. in the District Court of the United States, for the Eastern District of Illinois be and the same are hereby consolidated.

35 It Is Further Ordered by this court that a restraining order issue, restraining William A. Thuma, and and all parties interested in the matter of William A. Thuma, complainant, vs. Granada Hotel Corporation, et al., defendants, Superior Court of Cook County, Cause No. 519151 from further proceedings thereon, til the further order of this Court. It is also ordered that a restraining order be entered against all parties interested in the case of Edwin Rosenberg vs. Granada Apartments, Inc., General No. 37C 3704 now pending in the Circuit Court of Cook County, from further proceedings thereon.

It Is Further Ordered that the receiver appointed in the cause of Edwin Rosenberg vs. Granada Apartments, Inc., No. 37C 3704, Circuit Court of Cook County, turn over to the temporary trustee in this cause all books and records of the debtor herein.

It Is Further Ordered that Weightstill-Woods be and is hereby appointed as temporary trustee in this cause and that said temporary trustee upon taking possession of the property and assets of said debtor herein shall exercise all powers ordinarily exercised by receivers and trustees in equity in the District Court of the United States.

It Is Further Ordered that the bond of said temporary trustee shall be in the sum of Twenty Thousand Dollars (\$20,000.00); that said bond is to be approved by this court.

It Is Further Ordered that the City National Bank & Trust Company as Trustee now in possession of the property of the debtor at 525 Arlington Place, Chicago, Illinois, by virtue of the terms and conditions of the first



trust deed on said property; and all of its servants and employees and any and all other persons having possession, custody and control thereof; shall forthwith and immediately surrender possession, control and custody of the aforesaid real estate, together with all monies now in the possession of the said trustee, the City National Bank & Trust Company, received from the operation of the said described property, together with any and all other property or assets of whatsoever kind, nature and description belonging to the debtor herein, now in the possession of the said City National Bank & Trust Company, as Trustee; to the said temporary trustee herein.

It Is Further Ordered that any and all other persons having possession, custody and control of any of the assets or property belonging to the debtor herein, shall forthwith and immediately surrender possession, control and custody thereof to the said temporary trustee herein.

It Is Further Ordered that a hearing be held in this cause on the 11th day of June, A. D., 1937, at the hour of 10:00 o'clock A. M., Daylight Savings Time, in the United States Court House at Chicago, Illinois, before the Honorable Judge John P. Barnes or before any other

judge who may be hearing this matter in his stead, 36 at which time the Court may make permanent the possession of said trustee or may appoint a new trustee or trustees or may terminate the possession of said temporary trustee; that said debtor shall immediately give notice to the creditors, bondholders, stockholders and parties in interest herein of said hearing by mailing a notice of said meeting to all known creditors, bondholders, stockholders and parties in interest at the last known address of said bondholders, stockholders, creditors and parties in interest, and shall cause said notice to be published in the Chicago Herald & Examiner of Chicago at least once a week for two (2) successive weeks prior to the date set for said hearing.

It Is Further Ordered that the bondholders committee herein, and any of them having possession, custody or control of the names and addresses of the bondholders, creditors and claimants of the debtor herein, shall immediately deliver to said debtor, a complete list of said bondholders, creditors and claimants of the debtor herein.

That all matters not herein specifically provided for shall be determined by this court on the 11th day of June, A. D., 1937, at the hearing hereinabove mentioned and

*Notice.*

that this Court shall take full jurisdiction over the debtor and all of the affairs of the said debtor, with full reservation to enter any and all orders necessary herein for the proper preservation and administration of this estate.

Dated this 17th day of May, A. D., 1937.

Enter:

Barnes,  
Judge.

- 37 In the District Court of the United States, for the Northern District of Illinois, Eastern Division. In the matter of Granada Apartments, Inc., an Illinois Corporation, Debtor. In proceedings for Reorganization of said corporation under Sections 77-A and 77-B of the Bankruptcy Act of 1898, as amended and supplemented. No. 65811 and No. 3008-D.

**NOTICE.**

To All Creditors and Stockholders of Granada Apartments, Inc., an Illinois Corporation, Debtor. And All Other Interested Parties:

You and Each of You are hereby notified that a voluntary petition for the reorganization of Granada Apartments, Inc., an Illinois Corporation, under Section 77-A and 77-B of the Bankruptcy Act, No. 65811, has been filed in the District Court of the United States, for the Northern District of Illinois, Eastern Division and that an involuntary petition for reorganization of Granada Apartments, Inc., an Illinois corporation, under Section 77-A and 77-B of the Bankruptcy Act, No. 3008-D, has been filed in the District Court of the United States, for the Eastern District of Illinois, and that by order of the United States District Court, Eastern Division, entered on May 17, 1937, said petitions were consolidated and approved as properly filed and as filed in good faith.

You Are Further Notified in accordance with said order that a hearing will be held on June 11, 1937, at the hour of 10:00 A. M., Daylight Saving Time, before his Honor John P. Barnes, in the courtroom usually occupied by him in the United States Court House, at Chicago, Illinois, or in his absence before any other Judge who may be hearing this matter, at which hearing the Court will determine whether or not it shall make permanent the

possession of the temporary trustee appointed herein or appoint a new trustee or trustees or terminate the possession of said temporary trustee; and for such other matters as may come before the Court.

Granada Apartments, Inc.,  
an Illinois Corporation,

*Debtor.*

Mort D. & Frank Goldberg,  
*Attorneys for Debtor,*  
11 S. La Salle Street,  
Chicago, Illinois.

Entered  
May 20,  
1937.

47 And afterwards, to wit, on the 20th day of May, A. D. 1937, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

48 IN THE DISTRICT COURT OF THE UNITED STATES  
• • • (Caption—65811) • • •

May 20, 1937.

Present: Hon. John P. Barnes, Judge.

This day comes Weightstill Woods, Temporary Trustee, and presents his bond in the penal sum of \$20,000.00, which bond is approved and signed by the Court and Ordered by the Court to be filed by the Clerk of this Court.

49 And on, to wit, the 24th day of May, 1937, came the Protective Committee by its attorneys and filed in the Clerk's office of said Court its certain Intervening Petition in words and figures following, to wit:

*Intervening Petition.*

7

50 IN THE DISTRICT COURT OF THE UNITED STATES.

• • • (Caption—65811) • • •

Filed  
May 24,  
1937.

INTERVENING PETITION.

To the Honorable John P. Barnes, Judge of said Court:  
Your petitioners respectfully represent unto the Court  
as follows:

1. That your petitioners, Charles S. Tuttle, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, constitute the Protective Committee created under a certain Deposit Agreement dated April 26, 1933, with respect to the First Mortgage 6% Real Estate Gold Bonds secured by trust deed dated September 1, 1928, from Granda Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, which trust deed covers the premises located at 525 Arlington Place, Chicago, Illinois, a copy of said Deposit Agreement being hereto attached and marked "Exhibit A."

2. That the Committee heretofore called for deposit under the terms of said Deposit Agreement the said First Mortgage 6% Real Estate Gold Bonds secured by said trust deed, and of the aggregate principal amount of \$511,500 of said bonds now outstanding there has been deposited with the said Committee an aggregate principal amount of \$328,100 of said bonds under and pursuant to the terms and provisions of said Deposit Agreement, which said bonds so deposited are in excess of 25% in principal amount of all of such bonds which are outstanding and unpaid and are in excess of 10% in amount of all claims against the Debtor.

51 3. That your petitioners as such Committee deem it advisable and for the best interests of all parties involved in these proceedings that your petitioners as such Committee be permitted to intervene in these proceedings and become a party thereto.

4. That your petitioners, as such Committee have formulated a Plan of Reorganization of Debtor.

Wherefore, your petitioners as such Committee pray that an order be entered permitting them in their capacity as such Committee to intervene in these proceedings and to become a party in these proceedings for all proper purposes, and that Defrees, Buckingham, Jones & Hoffman, of Chicago, Illinois, counsel for the Committee in



this behalf, may receive notice of all motions and proceedings herein and that leave be given to the Committee to file, instant, its Plan of Reorganization of Debtor; and that an order be entered to provide for the time and manner of filing objections to the said Plan of Reorganization; to provide for the classification of creditors and stockholders of Debtor; to provide for the time and manner within which claims and interests against Debtor or its property may be filed; to provide for the time and manner in which objections to such claims and interests may be filed; to fix a date for a hearing for the confirmation of said Plan of Reorganization; to provide for proper notice thereof to creditors and stockholders of Debtor, and for such further orders as the Court may deem proper and necessary in the premises.

Charles S. Tuttle,  
Albert J. Peterson,  
Lewis W. Riddle,  
William G. Sturm,  
E. A. Kilmer,

Constituting the Protective  
Committee with respect to  
the First Mortgage 6% Real  
Estate Gold Bonds as afore-  
said.

By Vincent O'Brien,  
*Their duly authorized Agent.*

Defrees, Buckingham, Jones & Hoffman,  
*Attorneys for said Petitioners.*

52 State of Illinois, }  
County of Cook. } ss.

Vincent O'Brien, being first duly sworn, on oath deposes and says that he is the duly authorized agent in this behalf of the petitioners above named; that he has read the above and foregoing petition by him subscribed on behalf of said petitioners, and knows the contents thereof, and that the same is true in substance and in fact.

Vincent O'Brien.

Subscribed and sworn to before me this 28 day of May,  
A. D. 1937.

(Seal)

Kirsten Sorensen,  
*Notary Public.*

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EXHIBIT A.

The Granada  
(Chicago, Illinois)

(Depositary's No. 15294)

First Mortgage Bondholders' Committee

Deposit Agreement  
Dated April 25, 1933

Committee:

Charles S. Tuttle, Chairman  
Edward S. Clark  
Lewis W. Riddle  
William G. Sturm

Howard E. Green  
Secretary  
208 South La Salle Street  
Chicago

Marley Halvorsen  
Assistant Secretary  
105 South La Salle Street  
Chicago

Central Republic Trust Company  
Chicago  
Depositary

54 This Agreement, dated April 25, 1933, by and between C. S. Tuttle, Edward S. Clark, Lewis W. Riddle and W. G. Sturm (hereinafter called the "Committee"); Parties of the First part, and such holders of The Granada (Unsubordinated) First Mortgage Six Per Cent Real Estate Gold Bonds dated September 1, 1928, and of the interest coupons appertaining thereto, hereinafter more particularly described, as shall become parties to this Agreement as hereinafter provided, Parties of the Second Part (hereinafter called the "Depositors");  
Witnesseth that:

Whereas, Granada Hotel Corporation, an Illinois corporation, executed and delivered its First Mortgage Six Per Cent Real Estate Gold Bonds dated September 1, 1928, in the aggregate principal amount of \$525,000, and for the

purpose, among other things, of securing the payment of the principal of and interest on said bonds said Granada Hotel Corporation (which, together with its successors to the title to the property conveyed and mortgaged by the Trust Deed herein described and the persons who executed the aforesaid bonds, are hereinafter sometimes referred to collectively as "Obligor"), executed and delivered to Chicago Trust Company, as Trustee (which said Trustee and its successors in trust under the Trust Deed herein described, are hereinafter sometimes referred to as "Trustee"), a certain Trust Deed dated September 1, 1928, conveying, mortgaging and pledging to said Trustee, and to its successors in trust, certain property therein described which is commonly known as The Granada, located at 525 Arlington Place, Chicago, Illinois; and

Whereas, by a certain supplemental indenture bearing even date with said Trust Deed certain of said bonds numbered M141 to M165, both inclusive, in the aggregate principal amount of Twenty-five Thousand Dollars (\$25,000.00) maturing September 1, 1935, were subordinated to all other bonds of this issue as to the lien of said Trust Deed as security for the payment thereof; and

Whereas, the term "Bonds" as hereinafter used in this Agreement is to be deemed to refer only to bonds of this issue other than said subordinated bonds numbered M141 to M165, both inclusive, and the term "coupons" is to be deemed to refer only to interest coupons pertaining to bonds of this issue other than said subordinated bonds numbered M141 to M165; and

Whereas, said Trust Deed and said supplemental indenture bearing even date therewith and any and all instruments confirmatory thereof and/or supplemental thereto are hereinafter sometimes referred to collectively as "Trust Indenture," and all property, conveyed, mortgaged and pledged by said Trust Indenture, is hereinafter sometimes referred to as "Trust Property"); and

Whereas, default has been made or threatened in the due observance or performance of certain of the covenants and provisions in said Trust Indenture contained; and

Whereas, united action and co-operation on the part of the holders of the unsubordinated bonds of the Obligor are advisable and necessary in order that their rights and interests may be protected, and such united action and co-operation can best be procured through a Committee, as in this Agreement provided; and

Whereas, the Committee has consented to represent and to act for the Depositors as hereinafter set forth;

Now, Therefore, In consideration of the premises and of the mutual advantages that will arise herefrom, all Depositors, each for himself, but not for the others, or any of them, agree with each other and with the Committee and with the Depositary hereinafter appointed, as follows:

### Article I.

#### Deposit of Bonds and Issuance of Certificates of Deposit.

Section 1. Central Republic Trust Company, a corporation organized and existing under and by virtue of the laws of Illinois and having its principal office in the City of Chicago in the State of Illinois, is hereby appointed the Depositary under and according to the terms of this Agreement.

The Depositary may, upon the written request of the Committee, appoint a Sub-Depositary or Sub-Depositaries to accept deposits of Bonds and to issue Certificates of Deposit on behalf of such Depositary or to issue its or their own receipts pending issuance of Certificates of Deposit by the Depositary, and to assist in the performance of any acts herein provided to be performed by the Depositary or requested by the Committee pursuant hereto. The deposit of any Bonds with any such Sub-Depositary shall, for all purposes, be deemed to constitute and shall constitute deposit thereof hereunder. The form of any Certificates of Deposit to be issued by any such Sub-Depositary may be modified by the Committee to the extent which may be required for execution by such Sub-Depositary. References in this Agreement to the Depositary wherever appropriate, and particularly in all provisions relating to immunities, exemptions, freedom from liability, compensation and expenses, shall be deemed to include all Sub-Depositaries except when the context otherwise expressly indicates. Any Sub-Depositary shall in all respects follow the instructions of the Committee and the Depositary and shall transmit to the Depositary at reasonable intervals, or upon request of the Committee or the Depositary, all Bonds and/or coupons which may have been deposited with it, together with such information as the Committee and/or the Depositary may require in connection therewith, and upon so doing such Sub-Depositary shall be released and discharged from any and all obligation or liability with



respect to such Bonds and/or coupons so transmitted by it to, and received by, the Depositary.

Section 2. This Agreement shall be signed by the Parties of the First Part and two executed copies thereof shall be filed with the Depositary at its said principal office. The holder of any Bonds may deposit the same, together with the interest coupons appertaining thereto, in negotiable form, with the Depositary at its principal office and shall receive from such Depositary a transferable Certificate of Deposit signed in the corporate name of such Depositary by its authorized officer and substantially in the following form, with such appropriate insertions, variations and omissions as may from time to time be authorized, approved or adopted by the Committee:

Trust No. 15294.

Principal Amount

C. D. No. ....

Deposited \$.....

The Granada  
(Chicago, Illinois)

(Unsubordinated) First Mortgage Six Per Cent Real  
Estate Gold Bonds

Dated September 1, 1928

Executed by Granada Hotel Corporation

### Certificate of Deposit

Central Republic Trust Company hereby certifies that ..... or a predecessor in interest, has deposited with it as Depositary under a certain Deposit Agreement dated April 25, 1933, by and between the Committee named therein and such holders of the above mentioned unsubordinated bonds as shall become parties thereto as provided therein, unsubordinated bonds of the aforesaid issue, of the aggregate principal amount of ..... Dollars together with interest coupons appertaining thereto, as follows:

Number	Principal Amount	Maturity Date	With interest coupons of date specified below and following
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

A copy of said Deposit Agreement is on file at the office of the Depositary and may be inspected by any holder during regular business hours. Reference is hereby made to said Deposit Agreement for complete statements of the several rights, duties, obligations and exemptions of the Committee constituted thereby, of the Depositary thereunder and of the holder of this Certificate of Deposit, and also for a more complete description of the Trust Indenture securing the instruments deposited hereunder. Said Deposit Agreement is hereby made a part hereof with the same force and effect as if herein set out in full, and all the terms, conditions and provisions thereof are accepted and assented to by the holder of this Certificate of Deposit by his acceptance hereof.

Except as otherwise provided by said Deposit Agreement, the interest represented by this Certificate of Deposit is transferable only upon the books of the Depositary by the holder hereof in person or by attorney upon surrender of this Certificate properly endorsed. The Committee and the Depositary, or any Sub-Depositary, may treat the registered holder hereof, or, when presented duly endorsed in blank, the bearer hereof, as the absolute owner hereof for all purposes and shall not be affected by any notice to the contrary.

The holder hereof must give the Depositary written notice of any changes in his post office address, adequately describing this Certificate. The Committee and the Depositary are authorized to mail notices, securities and payments to such holder at his address as shown by the records of the Depositary. Any payment may be made to the registered holder hereof either in person or by mailing check for same, without requiring production of this Certificate for endorsement of such payment thereon and any payment so made shall be conclusive in favor of the Committee and the Depositary as against the registered holder hereof and any other parties having rights or interests in this Certificate.

This Certificate is not valid until signed by the Depositary.

Dated.....

Central Republic Trust Company,  
Depositary,

By.....  
Authorized Officer.

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## (Form for Back of Certificate)

For Value Received, the undersigned hereby sells, assigns and transfers unto.....  
the within Certificate and all the property and rights represented thereby, subject to all the terms and conditions contained in the Deposit Agreement referred to in said Certificate, and hereby irrevocably constitutes and appoints ..... attorney to transfer the same on the books of the Depositary constituted by said Deposit Agreement, with full power of substitution.

Witness the hand seal of the undersigned this.....  
day of ....., 193.....

(Seal)

Authenticity of signature  
guaranteed by:

Notice: The signature to this assignment must correspond with the name as written upon the face of the Certificate of Deposit in every particular without alteration or enlargement or any change whatever and Such Signature Must Be guaranteed by a Bank or Trust Company Satisfactory to the Depositary or Sub-Depositary.

Pending the preparation of definitive Certificates of Deposit, temporary Certificates of Deposit in lieu thereof may be issued in such form as the Committee may approve. Said Certificates of Deposit (including both definitive and temporary, and any Certificates issued by any Sub-Depositary as herein provided) are sometimes herein called "Certificates."

The Depositary shall, on the Committee's written direction (which may be given or withheld, either generally or in special instances, in the discretion of the Committee), accept:

(a) Bonds which are not accompanied by any or some of the coupons appertaining thereto; and/or

(b) Interest coupons of any maturity appertaining to any of said Bonds apart from the Bonds to which such coupons appertain;

and shall issue to the Depositor thereof a Certificate which may be typewritten but which shall be generally in the form of that hereinbefore set out, or in such form as the Committee may approve, modified, however, to show

the Bonds and/or particular coupons actually deposited and received.

All deposited Bonds and/or coupons shall be received by the Depositary on behalf of the Committee and shall be held subject to the sole control, direction and disposition of the Committee under the terms and provisions of this Agreement; and each holder of such Bonds and/or coupons shall, upon so depositing the same, become a party to and be bound by all the terms and provisions of this Agreement, in the same manner and with the same effect as if he had personally signed this Agreement.

Section 3. Certificates shall be registered on records kept by the Depositary for that purpose. No transfer (other than by operation of law) of any Certificate shall be valid unless made on said records by authorization of the registered holder thereof in the manner provided herein and in said Certificate. Such transfer shall be recorded on the records of the Depositary and, upon surrender of the Certificate to be transferred, properly endorsed for transfer, a new Certificate therefor shall be issued to the transferee. Any person presenting evidence satisfactory to the Depositary that he has become entitled to any Certificate in consequence of the death, bankruptcy or insolvency of the registered holder of such Certificate, or otherwise by operation of law, shall be recorded on the records of the Depositary as the holder of such Certificate and receive a new Certificate upon the surrender to the Depositary of the outstanding Certificate. The person in whose name any Certificate shall be issued, or any transferee who shall become the registered holder of such Certificate, shall be entitled to all the benefits and shall be subject to all the obligations of a Depositor hereunder, in the same manner and with the same effect as though such person or transferee had originally deposited the Bonds and/or coupons represented by such Certificate and with like effect as if this Agreement had been signed by him in person. The terms "Depositor" and "Depositors," whenever herein used, shall include not only the original Depositor or Depositors, but as well the registered holder or holders at any time of any Certificate issued hereunder.

The Committee, the Depositary and/or any Sub-Depositary may treat the registered holder, for the time being, of each Certificate, or, when presented duly endorsed in blank by such registered holder, the bearer thereof, as the absolute owner thereof and of all the rights



and interests of the original Depositor of the Bonds and/or coupons in respect of which the same was issued, and neither the Depositary nor any Sub-Depositary nor the Committee shall be bound or be affected by any notice to the contrary or of any trust, whether express, or implied or constructive, or of any charge or equity respecting the title or ownership of such Certificate or of the Bonds and/or coupons covered thereby. The Committee, the Depositary or any Sub-Depositary may at any time make any payments to the owners of Certificates either by paying the same to the persons then registered as holders of such Certificates or by mailing checks therefor to such persons at their addresses as shown by the record of the Depositary. Any such payments may be made without requiring production of Certificates for endorsement of such payments thereon and any such payments shall be conclusive in favor of the Committee and the Depositary as against all holders, owners or other parties having rights or interests in such Certificates.

Upon surrender of a Certificate or Certificates properly endorsed for transfer and at the request of the registered holder or owner thereof, the Depositary shall execute and deliver another Certificate or Certificates in exchange therefore representing in the aggregate a number of Bonds and/or coupons equal to the total number of Bonds and/or coupons represented by the Certificate or Certificates surrendered. All transfers, consolidations or splits of Certificates shall be made under such reasonable regulations as the Depositary may determine and upon payment of a sum sufficient to cover all charges and expenses of the Depositary and the Committee in connection therewith. If a Certificate shall be lost, stolen, mutilated or destroyed the Depositary may in its discretion issue a duplicate Certificate upon receiving evidence of such fact, satisfactory to it, and receipt of indemnity satisfactory to the Depositary, and surrender of the existing Certificate, if mutilated. Upon issuance of a new Certificate because of loss, theft, mutilation or destruction of any Certificate, the holder thereof shall pay to the Depositary any expenses involved in such service and shall further pay such fee as the Depositary shall deem reasonable.

Section 4. The Committee in its discretion may fix or may limit the period or periods within which holders may deposit their Bonds and/or coupons and within which they may become parties to this Agreement, and may from time

to time cause the books of Depositary for the registration or transfer of Certificates to be closed for such period or periods as Committee may see fit, and, in its discretion, either generally or in special instances, may at any time either before or after the expiration of any such period, alter, extend or renew the period or periods so fixed or limited for such other or further periods and upon such terms and conditions as it may determine. Holders of Bonds and/or coupons not so deposited within such period or periods will not be entitled to deposit the same, or to become parties to this Agreement, or to share in the benefits hereof, and shall acquire no rights hereunder, except upon obtaining the express consent of the Committee. At any time and upon such terms as it may deem proper from time to time, the Committee may direct that the Depositary accept from any Depositor the surrender of any Certificates issued hereunder, and, upon receipt thereof and in exchange therefor, surrender and deliver to the Depositor, or upon his order, the securities covered thereby or anything then held by the Depositary and/or the Committee in lieu thereof in accordance with the interest of such Depositor therein as determined by the Committee.

Section 5: Any Depositary or Sub-Depositary, upon being directed so to do by the Committee, may accept for deposit hereunder (but upon such terms and conditions, if any, as the Committee may determine) any certificates or receipts or documents evidencing ownership of, or interests in, or rights in respect of any of the Bonds hereinabove described and/or interest coupons appertaining thereto by whomsoever such certificates, receipts or documents may have been issued and shall issue therefor Certificates in such form as the Committee may prescribe. The Committee and the Depositary and any Sub-Depositary shall have and exercise all and every the same rights and powers in respect of such certificates, receipts or documents so deposited hereunder as are conferred upon and may be exercised by them in respect of Bonds and/or interest coupons deposited hereunder, and may take such action to procure possession of the Bonds and/or interest coupons covered thereby and as to the disposition thereof hereunder as the Committee shall deem advisable. The Committee shall have all such title to and all such powers with respect to all such certificates, receipts and/or other documents so deposited hereunder and with respect to the Bonds and/or coupons represented thereby and any interest in such Bonds and/or coupons and their proceeds as

are herein conferred upon it with respect to any Bonds and/or coupons deposited hereunder.

Section 6. The Depositary and/or any Sub-Depositary is authorized and directed to transfer, deliver and dispose of any and all Bonds, coupons and other instruments deposited hereunder, in accordance with the written order or orders from time to time of the Committee certified to such Depositary or Sub-Depositary in the manner provided by Section 3 of Article VIII hereof. The Depositary and any Sub-Depositary shall, at all times, be free from all liability and responsibility in dealing with or disposing of Bonds, coupons and other instruments deposited hereunder as directed by the Committee.

## Article II.

### Personnel and Duties of the Committee.

Section 1. Parties of the First Part are hereby constituted and appointed the Committee hereunder. By unanimous vote of all members of the Committee, as the same may at any time be constituted, the membership of the Committee may be increased or decreased to such number as the Committee may desire. In the case of increase in the number of members, the additional members shall be appointed by vote or action of a majority of the then members of the Committee. Any member of the Committee, or the Chairman as such, may be removed at any time by the vote of all the other members, and any member of the Committee or the Chairman as such may resign by giving notice of his resignation to the Secretary of the Committee and to the Depositary. In case of the death, resignation or removal or of the refusal or inability to act of any member of the Committee, the vacancy thus created may at any time be filled by vote or action of a majority of its remaining members. Pending the filling of any such vacancy the remaining or surviving members shall constitute the Committee. The Committee may settle any account or transaction with any removed or resigning member or with the estate of any deceased member and may give full release and discharge upon such resignation, removal or death. The Committee as at any time constituted, and disregarding any vacancy, shall enjoy all the rights, powers, interests and immunities of the Committee as originally constituted and the word "Committee" as used herein

shall always be deemed to refer to the Committee as from time to time constituted.

The first Chairman of the Committee shall be the member designated in Article XI hereof who shall be and continue to act as such until he shall resign from the Committee or from the Chairmanship thereof, or until he shall die or be removed from the office as herein provided. Any successor Chairman shall be appointed by the Committee from the members thereof. The Secretary or the Chairman of the Committee shall file written notice with the Depositary and with any Sub-Depositary of any changes in the membership of the committee or in the offices of Chairman or Secretary thereof, and such filing shall be deemed to constitute notice of such changes to all parties hereto.

In so far as appropriate to that purpose, the title to any property held by the Committee shall (subject to the power of the majority of the Committee to make disposition thereof) be in the nature of a joint tenancy, and not a tenancy in common, with survivorship among members of the Committee upon the death, resignation or removal of any of them. If requested by the Committee, however, any former member, or in case of his death his executors, shall execute instruments releasing to the Committee all his right, title and interest in the property held hereunder.

Section 2. The Committee may hold its meetings at such times and places and upon such notice as it may at any time determine. Unless otherwise by resolution of the Committee, the Chairman, the Secretary or any two members of the Committee may at any time or times call a meeting of the Committee, such notice to be given thereof as the person or persons calling the same may, in his or their uncontrolled discretion, deem to be reasonable. The Committee shall keep and maintain a record of its proceedings and actions in such form as it shall determine. Except where in this Agreement it is expressly stated that powers of, or actions by, the Committee shall be exercised or taken by a greater proportion or number of members thereof, the Committee may exercise any of the powers or take any action under this Agreement with the assent of a majority of the Committee, which assent may be expressed at a meeting of the Committee by vote or by resolution of a majority of the members of the Committee, or without a meeting by an instrument or separate concurrent instruments in writing signed by a majority of the members of the Committee. The Committee may adopt its own rules



of procedure respecting the taking of Committee action, and, as respects any order given or action taken by the Committee, neither the Depositary, any Sub-Depositary, Depositors nor third persons need inquire as to whether such rules were observed, or as to whether the minority of the Committee were notified or apprised of any meeting or of the passing or contemplated passing of any order or the taking or contemplated taking of any action by the Committee. Any member of the Committee may vote or act by proxy, attorney or agent (which proxy, attorney or agent may, but need not, be another member of the Committee and may be appointed in writing or by telegraph, radio or cable) and the vote or act of such proxy, attorney or agent shall be as effective as the vote or act of the member appointing the same. The Committee may select, hire, employ and dismiss, in and about the exercise of any of its powers, a secretary and an assistant secretary or assistant secretaries (who may, but need not, be members of the Committee) and such other officers, counsel, engineers, accountants, appraisers, superintendents, laborers, agents and employees as it may see fit, and in such manner and at such times as it may deem advisable.

Section 3. The Committee is authorized and empowered to construe this Agreement, and its construction made in good faith shall be conclusive and binding upon all of the parties hereto. The Committee may remedy defects and supply omissions in this Agreement and may make such modifications as in its judgment may be deemed necessary or proper for the purposes hereof, and its judgment as to the expediency or necessity for any such action shall be conclusive and binding upon all parties hereto. The Committee shall also have power (whenever in its judgment it may be advisable, and from time to time) to amend this Agreement, and an executed copy of all amendments shall be filed with the Depositary and with all Sub-Depositaries. If in the judgment of the Committee, which shall be conclusive and binding upon all the parties hereto, any such amendment does not alter the rights of the Depositors to their substantial detriment, it shall when so filed become binding upon all parties hereto without further notice. If in the judgment of the Committee any such amendment affects the rights of the Depositors to their substantial detriment, such amendment shall not be effective unless and until approved by a meeting of Depositors held in the manner prescribed by Article V hereof; provided, how-

ever, that in lieu of approval at such a meeting the Committee may cause notice of such filing and a brief statement of the nature of such amendments to be mailed to the registered holders of Certificates in a manner similar to that provided in Article IV of this Agreement (but subject to the provisions of Section 4 of Article X hereof) in which latter case any such holder may within (20) days after the mailing of such notice file written notice of dissent and withdraw from this Agreement in the manner and upon conditions similar to those specified in Article IV of this Agreement but in the absence of such filing of dissent and withdrawal such holder shall be conclusively presumed to have assented to such amendment and shall be bound thereby.

Section 4. The Committee shall serve without compensation, but shall be entitled to be reimbursed for all disbursements, expenses and liabilities (including counsel fees) made or incurred by it or by its agents on its behalf in exercising any powers and performing any duties hereby vested in the Committee. The Committee (and/or the Depositary) shall be entitled to hold and to resort to the deposited Bonds and/or coupons and any funds or property which it may purchase, acquire or receive and which may come into its hands, for its expenses, including the compensation and expenses of the Depositary and any Sub-Depositary, and of such attorney, engineers, accountants, appraisers, superintendents, laborers, agents and employees as the Committee and/or the Depositary may employ, and any and all disbursements made or indebtedness or liabilities incurred by the Committee and/or Depositary hereunder. Holders of Certificates shall not be personally liable for such expenses, or for such indebtedness or liabilities, and there shall be no personal liability on the part of such holders for any action taken or expenses incurred by the Committee, but the Committee shall look solely to the security of the deposited Bonds and/or coupons and property subject hereto for the payment of such expenses, indebtedness and/or liabilities.

Section 5. The Committee as a committee, the members thereof as individuals, any firm or corporation with which any of the members of the Committee shall be associated, the Depositary, or any successor Depositary, or any Sub-Depositary, or any of their agents or officers, either separately or with each other, may deposit Bonds and/or coupons under this Agreement, and shall have the same rights and be subject to the same liabilities in respect thereof as

other Depositors and any or all such persons and corporations may be or become pecuniarily interested (as owners, pledgees, purchasers, sellers, underwriters, or otherwise) in the property, securities or matters referred to in or connected with this Agreement or with any plan and/or agreement of reorganization or readjustment which the Committee and/or the Depositors may adopt or approve as herein provided, or otherwise, or in any property, securities or matters in or with which the Obligor may be directly or indirectly interested or concerned, and in this regard the Committee as a committee, the members thereof as individuals, any firm or corporation with which any of the members of the Committee shall be associated, and the Depositary, or any Sub-Depositary, or any of their officers and agents, shall be as free to act as if this agreement had not been entered into.

60 Any member of the Committee may be or become an officer, director, stockholder, agent, or employee of any corporation, trust or association organized or created pursuant to the provisions of this Agreement; and the Depositary or any Sub-Depositary or any member of the Committee may be appointed or act as trustee under any mortgage, indenture or agreement created or entered into in connection with any plan of reorganization or readjustment adopted pursuant to the provisions of this Agreement or otherwise, and may act as transfer agent, registrar or in other capacity in connection with any securities issued pursuant to the provisions of any plan or agreement or reorganization or readjustment so adopted.

The Committee shall have and it hereby is given the right to co-operate with such other committees as are or may hereafter be organized to represent other interests connected with or pertaining to the Trust Property or the Obligor, and the Committee shall have the right to act (by its Chairman or by any member of the Committee or other representative or representatives appointed by it) in conjunction with any such other committees. The members of the Committee or any of them may become members of or may constitute any such other committee.

### Article III.

#### Powers of the Committee.

Section 1. The Depositors, severally and respectively, do hereby assign, transfer and convey to the Committee, its successors and assigns, the full, legal, equitable and



beneficial title to all Bonds, coupons and other instruments deposited hereunder for all and singular the purposes hereof, and severally and respectively agree that the Committee shall be and it is hereby vested with every right, power and authority of whatsoever character, nature or purpose, in order to enable the Committee to carry out and perform all and singular the purposes and intent of this Agreement. The title to all deposited Bonds, coupons and other instruments shall vest in the Committee immediately upon the deposit thereof with the Depositary or any Sub-Depositary, and the Depositors respectively agree at any time and from time to time, on demand of the Committee, to execute any and all other transfers, assignments, authorizations and approvals requested by the Committee for confirming, vesting or otherwise evidencing the ownership of said Bonds, coupons or other instruments in the Committee or for making effective any act, agreement or undertaking of the Committee in respect thereof. The Committee shall have and may exercise, in its discretion, all the rights and powers of the respective owners or holders of Bonds, coupons and other instruments deposited hereunder; and without in any manner limiting the other provisions hereof and the powers and authorities vested in the Committee through the assignment, transfer and conveyance to it of the deposited Bonds, coupons or other instruments, it is further agreed by the Depositors that the Committee shall be fully authorized, in its discretion:

(a) To transfer the deposited Bonds, coupons and other instruments, or cause the same to be transferred, into the name of the Committee or its nominee(s), and to attend either in person or by proxy all meetings of bondholders or creditors of the Obligor, and as the holders and owners of said Bonds, coupons and other instruments to vote upon all questions which may arise at such meetings, and also as such holders and owners to consent, dissent or request either in writing or otherwise in respect to any and all matters;

(b) To consent or agree to or to make any changes, modifications, alterations or amendments in any or all of the terms, covenants or provisions of Trust Indenture and/or of Bonds and/or coupons appertaining thereto as may to the Committee seem advisable, and to execute and/or assent to the execution of all instruments convenient or necessary thereto; and to consent to and/or to extend the time of payment of any of said Bonds and/or coupons for such period or periods as the Committee may deem advisable;



(c) To exercise, assert and enforce by legal proceedings or otherwise, in its uncontrolled discretion, any powers vested in or conferred upon the owners and holders of the deposited Bonds and/or coupons by the terms thereof or under the terms of Trust Indenture or otherwise, and in general to do such acts and enter into such contracts and agreements as the Committee in its uncontrolled discretion may deem judicious or proper in order fully and effectively to carry out the purposes of this Agreement; to elect to have the principal of the Bonds declared due and payable forthwith or otherwise and to request any trustee or trustees under Trust Indenture so to do, and to withdraw any such election; to declare said Bonds due and to withdraw any such declaration; to waive and release any payment of principal or interest; to waive or suspend any default in the Bonds or coupons or in sinking fund requirements or under any provisions of Trust Indenture or of any other bonds, notes, securities or claims at any time held hereunder; to ratify any action heretofore or hereafter taken by any trustee under trust Indenture; to pay or consent to the payment in whole or in part of deposited Bonds and/or coupons and/or of any claims against Obligor whether or not such claims are secured by a lien prior to said Bonds and/or coupons; and to make such requests upon or give such directions to any trustee or trustees under Trust Indenture as are expressly or impliedly provided for therein;

(d) To repair or improve the Trust Property or to cause any repairs, improvements, alterations or additions to be made thereto; to purchase, lease or otherwise acquire any machinery, equipment, fixtures, tools, materials, supplies, facilities, rights or property of any kind or nature to be used in or about the Trust Property; to enter upon and to take possession of the Trust Property or any part thereof, either with or without the acquiescence of the owner thereof or of the holders of any prior or subsequent liens thereon and to lease all or any part thereof upon such terms and for such periods as the Committee, in its absolute discretion, may determine, and/or to operate and use the same, and for the purposes of said operation to employ and discharge and direct all managers, operators, agents, laborers, and employees, and/or to make all contracts or agreements, whether in respect of the purchase of supplies, material or equipment, or otherwise, as the Committee shall deem best for such operation; to take such possession and/or engage in such operation as the agent of any trus-

tee or trustees under Trust Indenture; to request any such trustee or trustees to take such possession and/or engage in such operation and to exercise all other power and authority granted in Trust Indenture; to institute, prosecute any such trustee or trustees to institute, prosecute or defend, or to intervene in or become party to, any suit or proceeding for the foreclosure of Trust Indenture or otherwise, and to exercise all other powers and pursue all other remedies provided in Trust Indenture and/or provided by the laws of Illinois or of any other State where Trust Property is located; among other things to institute proceedings for strict foreclosure, or request or direct any such trustee or trustees so to do, and to that end, for and on behalf of each and all of the Depositors, to waive a deficiency decree and to state in any Bill of Complaint, Petition or other pleading that the Depositors are willing to take and accept any property conveyed, mortgaged and pledged by Trust Indenture in full satisfaction of the indebtedness secured by Trust Indenture or to authorize any such trustee or trustees so to do; and to apply for and procure, or direct any such trustee or trustees to apply for and procure the appointment of a receiver or receivers for all or any part of the Trust Property and/or any other property or the dismissal of any such receiver or receivers, or the substitution of any such receiver or receivers or to consent to any such action; to consent to the issuance of receivers' certificates relating to all or any part of Trust Property and/or to any other property held by or on behalf of the Obligor or the Committee upon such terms and conditions and having such liens as the Committee may deem necessary or advisable, and to oppose the issuance of such receivers' certificates; to remove or take part in the removal or concur in the resignation of any trustee or trustees or any other persons or corporations acting under any provisions of Trust Indenture and to appoint or take part in appointing any successor to any such trustee, person, or corporation; and/or to accept any certificate of sale, or other instrument of title for, or a conveyance of, all or any part of the Trust Property or any other property or of any right or interest therein, as full or partial satisfaction of all or of any part of the indebtedness secured by Trust Indenture, and/or in connection with any such transaction, to give or grant to anyone an option to purchase any such property or any right or interest therein on such terms and conditions and at such times as the Committee may determine;

(e) To institute or cause to be taken or instituted or to intervene in or become a party to or exercise control over such suits, actions, defenses or proceedings, at law, in equity or otherwise, and to give such directions, execute such papers and do such acts, whether under or for or in connection with the foreclosure of Trust Indenture, or otherwise, as the Committee shall deem judicious or proper in order to protect the security provided by Trust Indenture, or to procure the payment of the deposited Bonds and/or coupons, with interest thereon, or any indebtedness secured by Trust Indenture, or to enforce the observance or performance of any covenants, warranties, agreements or conditions contained in said Bonds and/or coupons and/or Trust Indenture or otherwise; to deposit or cause the Depositary or any Sub-Depositary to deposit any or all of said Bonds and/or coupons as exhibits or evidence in any suit, actions or proceedings as required by law, or the ruling of any court, master in chancery or commissioner, or other officer of any court; and to represent, bind and act for the Depositors in any and all such matters as fully and completely as the Depositors themselves might do;

(f) To institute or cause to be taken or instituted or to intervene in or become a party to suits or actions or proceedings enforcing or attempting to enforce any guaranty or guaranties of the payment of the principal of and/or interest on said Bonds and/or any other indebtedness secured by said Trust Indenture and/or of the observance or performance of any covenants, warranties, agreements or conditions contained in said Bonds and/or Trust Indenture or otherwise;

(g) To consent and agree to the sale of all or any part of the Trust Property or of any property of Obligor (without regard to whether such sale may or may not be pursuant to judicial or legal proceedings) by the Obligor, 62 by and trustee or trustees, or by any receivers of the Obligor, free and clear from the lien of Trust Indenture or of any other lien, or subject to any lien or liens, at such price or prices and upon such terms and conditions as the Committee in its discretion may see fit, and to consent to the release by any trustee or trustees under Trust Indenture of any or all of the property covered by Trust Indenture from all or any part of the lien securing deposited Bonds and coupons, for such consideration as the Committee may fix and with or without compliance with the provisions, if any, of Trust Indenture as to the release by any trustee or trustees of property covered thereby;

(h) To apply from time to time any and all moneys in the hands of the Committee in the following manner: First, to the discharge or payment of any advances for and costs and expenses of any judicial, legal or other proceedings, and costs, expenses, advances, liabilities, compensation, and/or fees of any receivers of any property subject to the lien of Trust Indenture, and of any trustee or trustees, under Trust Indenture and of their counsel; the furnishing of indemnity to any trustee or trustees; the payment and/or purchase of receiver's certificates; the acquisition of securities or property and payment of the costs and expenses of operating, rehabilitating and/or improving such property and the Trust Property; and the payment of all indebtedness, obligations, liabilities and expenses of the Committee and/or the Depositary, and of their counsel, and for the compensation of the Depositary and of counsel for the Committee and the Depositary, and for any other purposes specified or permitted under the provisions of this Agreement; and Second, at such time or times as the Committee in its uncontrolled discretion may deem prudent, to distribute any balance of such moneys not needed for the above purposes, to and among the holders of Certificates of Deposit ratably and in proportion to the amount of principal and interest then due on Bonds and coupons described in their respective Certificates without preference or priority of one such Bond or coupon over any other or of interest over principal or of principal over interest, provided, however, that the Committee may in its discretion at any time and from time to time alter or vary the order of payment or distribution aforesaid for any reason which in the opinion of the Committee may make such variance advisable.

(i) To consent or agree to the making of any notation or memorandum on the Bonds and/or coupons deposited hereunder, evidencing any partial payment thereon or any release of property from the lien of Trust Indenture, or any other thing done or consented to by the Committee, or any agreement made in regard to such partial payment, release or other thing as to the Committee may seem proper; and in the event of receiving interest on any of the deposited Bonds the Committee is authorized to surrender the coupons representing such interest, and in connection therewith to execute and deliver in the names of the Depositors or otherwise, any Ownership Certificates or other instruments and to do any and all further acts



that may be necessary or desirable in order to comply with any Federal or State laws or regulations concerning income or other taxes, or in lieu of executing such Ownership Certificates or other documents to waive performance by the Obligor of any obligation or duty to pay or to reimburse bondholders for any income taxes on such interest so paid;

(j) To do or cause to be done whatever (including the execution and delivery of proper instruments) the Committee in its sole discretion may deem expedient, necessary or proper to preserve, protect, guard, secure, promote or enforce the rights and interests of the Depositors; to pay, discharge, purchase and/or compromise in whole or in part the principal, interest or penalties on all or any part of any obligations (including taxes and assessments) now or hereafter deemed by the Committee to constitute liens on the Trust Property or on any other property owned by the Obligor or owned or held by or for the Committee, or on any part thereof; to consent to the issuance of new securities secured by a lien having priority to the lien of the Trust Indenture or to that of the deposited Bonds on all or any part of any such property in such amount or amounts as the Committee may deem necessary or desirable for the purpose of funding or paying any indebtedness, including taxes and assessments, which the Committee may deem to be owing for or to constitute a lien on any such properties and also sufficient to provide for the payment of all or any part of the expenses in connection with the issuance of such new securities; to make any stipulation or agreement in respect of the priority, parity or subordination of any mechanic's lien or other lien or claim of lien against any such property or of any bonds or obligations secured or claimed to be secured by lien on any such property whether or not the same be deposited with the Committee, and to distribute or permit the distribution of money or property to the holders of any such liens, claims or bonds in accordance with such stipulation or agreement, whether or not such distribution accords with the distribution which would have been made except for such stipulation or agreement; to enter into and perform any contracts or agreements with the holders of any such liens, claims or obligations and/or to liquidate, compromise, settle or discharge any such lien or liens and/or taxes and assessments, either by conveyance of any securities or property then held by the Committee to any person, firm

or corporation or taxing authority or otherwise, or to permit any such property to revert to such taxing authority or lienholder; to make any agreement, settlement or adjustment with any holder of Bonds and/or coupons not depositing the same under this Agreement for the purpose of securing his consent to any action or nonaction contemplated by the Committee or the deposit of the Bonds and/or coupons of such holder under this Agreement; and to agree to permit any such holder or any Depositor to withdraw from this Agreement at such time and on such terms and conditions as the Committee may see fit.

(k) To demand, collect and receipt for all amounts that may be due or owing upon or in respect of deposited Bonds and/or coupons whether for principal or for interest, or otherwise; to compromise, release or settle any or all claims or rights of Depositors hereunder; and to take or institute or cause to be taken or instituted all such suits, actions or proceedings, whether legal, equitable, in bankruptcy or otherwise, for the recovery of any property or the amount due upon any Bonds and/or coupons or other obligations held or owned by the Committee; and to assent to any composition in bankruptcy or otherwise offered by or on behalf of the Obligor or any person having any interest in the Trust Property or any other property acquired or sought to be acquired by the Committee; and to enforce payment of the deposited Bonds and/or coupons by proving the same in bankruptcy or otherwise;

(l) To do whatever in the judgment of the Committee may be deemed expedient to promote or procure the sale, lease, exchange and/or purchase of all or any part of the property described in Trust Indenture or of any property of the Obligor without regard to whether such property is or is not covered by the lien of Trust Indenture and without regard to whether such sale, lease, exchange and/or purchase is or is not pursuant to judicial proceedings and/or foreclosure or otherwise; if the Obligor be a corporation, to purchase or otherwise; acquire all or any part of its capital stock; to cause any such corporation to dissolve, or to be dissolved, and to purchase all or any part of its property at receiver's sale or other sale incident to said dissolution or winding up of the affairs of such corporation; at any time to purchase or cause to be purchased in its behalf or for its account or otherwise to acquire any property described in Trust Indenture or belonging to the Obligor or any part of any such property, at such prices

and on such terms as the Committee may deem expedient; to acquire the same by foreclosure, or otherwise, and in connection therewith to waive any deficiency judgment, and to purchase, or provide for the purchase of, or acquire; or provide for the acquisition of, any such property or any other property or any interest therein or certificate of sale therefor or decree of foreclosure thereon, or any lien thereon or obligations secured by lien thereon or any other property, or thing of use in the judgment of the Committee in promoting the interests of the Depositors; to manage, control, rent, mortgage, or otherwise deal with all or any part of any property purchased or otherwise acquired by or for the Committee under the powers conferred upon the Committee by any of the terms of this Agreement, as it may deem for the best interests and protection of the Depositors; and to sell or otherwise dispose of, on such terms and conditions as the Committee may deem prudent, any securities or property at any time held by or for the Committee hereunder which the Committee deems it inadvisable to retain;

(m) To negotiate and contract with any persons, firms, and corporations for obtaining or for granting powers, rights or facilities, exchanges of property, or any other right which may be deemed necessary or desirable to obtain or grant, and to make contracts therefor, and generally to make and ratify such purchases, contracts, stipulations or arrangements as in its opinion will operate directly or indirectly to aid in the preservation, improvement, development, or protection of the property subject to said Trust Indenture or of any property which the Committee shall acquire or shall have contracted to acquire;

(n) To purchase any obligations or securities at such price or prices as it may deem advisable; to sell or exchange the deposited Bonds and/or coupons for securities or obligations of the Obligor or of any corporation, person, trust, firm or association, which securities or obligations shall bear such date, mature on such date or dates, bear such rate or rates of interest or dividends (if any), and contain such terms, provisions and conditions as the Committee in its uncontrolled discretion may deem judicious or proper, and which securities or obligations may be secured or unsecured, all on such terms as the Committee in its uncontrolled discretion may deem judicious or proper, it being understood that unless the context otherwise indicates the word "securities" as used in this Agreement is intended to include bonds, notes, obligations, debentures, participation

certificates, voting trust certificates, shares of corporate stock, and all other like or unlike evidences of interest or indebtedness;

(o) To give or provide such indemnity and protection to any title company as may be required by such company in connection with the issuance of any guaranty or certificate of title or policy of title insurance covering all or any of Trust Property or other property acquired by the Committee, and generally to furnish indemnity to such persons as the Committee may deem advisable, and to pay any premium or charge for the issuance of any title guaranty or certificate of title or policy of title insurance or other indemnity policy or policies that the Committee may acquire or cause to be issued or acquired; to give or provide such indemnity and protection to any trustee or trustees under Trust Indenture as the Committee may approve against any liability by reason of any action or thing which any such trustee or trustees may take or do at the request of the Committee; and to pay any expenses or disbursements of any such trustee or trustees or of the Committee or of the Depositary, and any compensation or fees of any such trustee or trustees or the Depositary, and for the purposes aforesaid to pledge, mortgage, or sell any or all of the 64 deposited Bonds and/or coupons and any and all securities, bonds and/or coupons or property acquired by or on behalf of the Committee;

(p) To distribute in whole or in part, any interest received in respect of coupons held hereunder pro rata to and among Depositors holding Certificates covering coupons so paid and/or at any time to borrow moneys or otherwise acquire funds and distribute such sums or any part thereof or any other funds then held by the Committee, to and among the holders of Certificates of Deposit issued hereunder including (without limiting the generality hereof) the distribution of sums approximating the interest that would have been payable on any deposited coupons had there been no default thereon, and/or distributions in anticipation of the consummation of any plan or agreement of reorganization or readjustment which the Committee has approved or may expect to approve;

(q) To borrow any sum or sums of money from any persons, firms or corporations whatsoever (including the Depositary or any Sub-Depositary or any of the members of the Committee individually, or the firms or corporations of which they or any of them may be members, officers, directors or stockholders), at any time or times and for any



purpose or purposes which the Committee in its uncontrolled discretion deems to be expressly or impliedly authorized by any of the provisions of this Agreement whatsoever (including the payment of any expenses, obligations and liabilities of the Committee); and for the moneys so borrowed the Committee may give promissory notes or other obligations for the payment of money, binding the deposited Bonds and/or coupons and/or Trust Property and/or other securities or property held by the Depositary or the Committee hereunder, but no such note or notes shall be deemed to constitute or shall create any personal liability on the part of the Committee or its members, the Depositary or any Sub-Depositary or any Depositor hereunder; and, as security for the payment of any moneys so borrowed and for the performance of the provisions of any such promissory notes and/or of any other obligations so given, to charge, by pledge, mortgage and/or otherwise, the deposited Bonds and coupons, or any of them, and the Trust Property or any other securities or property purchased, acquired or held by the Committee or any part thereof, and any person, firm or corporation from whom the Committee shall borrow money, as hereinabove provided, may rely conclusively upon the certificate of the Committee or of the Chairman or Secretary of the Committee as to the purposes for which any such moneys are borrowed and that such purposes are within the powers granted to the Committee, and no such person, firm, or corporation shall be required to see to the application of the moneys so borrowed, or any part thereof; to direct the Depositary or any Sub-Depositary to hold the deposited Bonds and coupons and other securities or property, or any designated part thereof, as security for the repayment of any moneys borrowed or to be borrowed by the Committee as hereinabove provided, in which case such Bonds and coupons and other property so designated shall be, and shall be held by such Depositary or Sub-Depositary as, security for such loans with the same effect as if they were actually deposited with the person or corporation making such loans as security for the payment thereof;

(r) To apply any or all of the deposited Bonds and coupons and any other rights, securities or property at any time in the possession or control of the Committee to the whole or partial performance of any contract entered into by the Committee or to the payment of any obligations or liabilities which it may have incurred in the exercise of any powers expressly or impliedly conferred upon it by the pro-

visions of this Agreement, or to mortgage or pledge all or any part of such securities or property or to exchange the same, or to sell the same at public or private sale and with or without notice, for any consideration that the Committee may approve, and to apply such of the proceeds of such sale, mortgage or pledge as may be required to the payment or performance of any such contracts or other obligations or liabilities including the expenses of the Committee and the Depositary;

(s) To do any and all things which it may deem necessary, proper or expedient to procure a satisfactory readjustment or reorganization of the obligations constituting or secured by liens on the Trust Property; to prepare any plan or agreement for any such reorganization or readjustment and to amend the same or to join in any such plan or agreement prepared by others and to submit any such plan or agreement or amended plan or agreement to the Depositors hereunder; to do all things deemed necessary or advisable to secure the approval and the complete consummation of any such plan or agreement; to cause to be organized any corporation, trust, association, firm or entity that the Committee may deem advisable for the purposes of any such plan or agreement; and upon the approval of any such plan or agreement in the manner herein provided, to do all acts and things required or permitted thereby or thereunder; and

(t) To rescind, alter, modify, enlarge or restrict any contract or agreement entered into, or withdraw any consent given or election made, or dismiss or cause to be dismissed any action or proceeding commenced or caused to be commenced by the Committee under any of the provisions hereof.

Section 2. No power or authority in this Agreement or in any article, section or sub-section thereof conferred  
65 upon or granted to the Committee or the Depositary is intended to be exclusive of any other power or authority (whether or not granted in the same article, section or sub-section) but each and every such power and authority shall be cumulative and shall be in addition to every other power or authority given in this Agreement. No power or authority in this Agreement granted shall be exhausted or impaired by the exercise thereof, but may be exercised again from time to time as occasion arises. Any power or authority in this Agreement granted may in point of time be exercised without regard to the order in which the statement of such power or authority may occur in this

Agreement. Particularly may all powers or authorities granted in this Agreement be exercised before or after any sale or purchase of any or all of the Trust Property or any property of the Obligor or other person or corporation, or the acquisition thereof on foreclosure or otherwise and before or after or irrespective of the adoption or approval of any plan or agreement of reorganization or readjustment, and the exercise of any of said powers or authorities shall not be deemed to constitute a plan of reorganization or readjustment which needs to be submitted to the Depositors. It is the intention to confer upon the Committee all powers which it may deem necessary or expedient in or towards the furtherance of the general purposes of this Agreement, although such powers be of a character not contemplated at the time of the execution hereof.

In respect of any power granted herein the Committee shall be deemed to have all supplemental powers necessary or incidental to full and proper exercise of the granted powers. Without in any manner limiting such supplemental powers, the Committee shall have the power to make investigations, inspections, and inquiries; to employ counsel, experts, and advisers; to make reports to Depositors; to sign, execute and deliver letters, documents, telegrams, notices, requests, covenants, deeds, grants, assignments, indentures, mortgages, deeds of trust, bonds, notes, securities, pledges, powers of sale, leases, releases, and other like or unlike documents; to sue or defend in courts, whether at law or in equity, or bankruptcy or of claims, or before committees, councils, or commissions or any other governmental agency or agencies; and to do all other things which the Committee regards as permitting the more convenient, speedy or satisfactory exercise of any or all of the powers granted herein. The Committee shall be under no obligation to use or exercise any power or authority which it may have, such powers and authorities being given to the Committee for use by it only when, from time to time, the Committee deems it advisable to use the same.

Section 3. All moneys expended or obligations incurred by the Committee under this Article III shall be deemed expenses for which the Committee shall be entitled to reimbursement and lien as provided in Section 4 of Article II of this Agreement.

Section 4. In the event that the Committee in the exercise of any of the powers conferred upon it either by this Agreement or under any plan or agreement of reor-



ganization or readjustment shall purchase or otherwise acquire any property or any lien thereon or interest therein or certificate of sale, or certificate of purchase, or commissioner's deed, sheriff's deed, or other instrument of title therefor, title thereto being taken either in the name of a member or members of the Committee or of its nominee or nominees or any trustee or trustees or otherwise, then and in every such case, the rights and interests of the Depositors therein shall be only in the proceeds, rents, issues and avails of such property and shall not be or constitute an interest legal or equitable in the real estate or property, and such rights and interests of the Depositors shall at all times and for all purposes be deemed to be personal property and shall be dealt with accordingly and upon the death of any owner or holder thereof such rights and interests shall pass to his or her personal representatives or assigns and not to his or her heirs at law.

In the event title shall be so taken in the name of a nominee or nominees of, or in the trustee or trustees selected by, the Committee then and in every such case, unless otherwise expressly provided, neither the Committee nor any individual member thereof shall be deemed to have any interest, legal or equitable, in the real estate or property, but the rights and interests of the Committee therein shall be deemed to be a power of direction only with respect to the conveyance by such nominee or nominees, trustee or trustees of the title to the property and the disposition of the proceeds, rents, issues and avails thereof.

#### Article IV.

##### Plan of Reorganization or Readjustment.

Section 1. The Committee shall have power, either before or after any sale of the Trust Property or acquisition thereof by any trustee or trustees under Trust Indenture, or by the Committee on foreclosure or  
66 otherwise, to make, enter into, or become a party to (either alone or in conjunction with other bondholders, creditors, stockholders, or committees representing them, or otherwise) any plan and/or agreement of reorganization or readjustment of any or all property, securities and/or affairs of the Obligor, containing such terms and conditions as the Committee may, in its sole discre-



tion, deem proper or advisable, or the Committee may approve and adopt any such plan or agreement though not prepared by it. Such plan or agreement may constitute managers of the reorganization or readjustment under it and provide for their compensation and expenses, and the Committee or any members thereof may act as such managers or may be members of any committee constituted by such plan or agreement.

Such plan or agreement of reorganization or readjustment may be effected (but need not be) by a merger or consolidation of the Obligor with any corporation or corporations, trust or trusts, or may be effected by a sale and/or the transfer of all or any part of the Trust Property or other property of the Obligor to any person or persons, corporation or corporations, trust or trusts, or by an exchange of the deposited Bonds and/or coupons for other bonds, obligations, securities and/or stocks or may be effected in any like or unlike manner which the Committee may determine or approve.

Upon the approval and/or adoption of any such plan and/or agreement of reorganization or readjustment by the Committee, a copy thereof shall be filed with the Depositary and with any Sub-Depositary and thereupon a brief notice of the fact of such adoption and filing and a summary of such plan or agreement shall be prepared and shall be mailed in an envelope with postage prepaid to each of the Depositors, addressed to them in accordance with the provisions of Section 4 of Article X hereof. The affidavit of the Secretary of the Committee that such notices and summary have been mailed and of the date of such mailings shall be deemed to be and shall be sufficient and conclusive evidence of the facts and things therein stated and all Depositors shall be concluded thereby. Within twenty (20) days after the mailing of such a notice, any Depositor may file with the Depositary a notice, in writing, that such Depositor dissents from such plan or agreement, and may withdraw from deposit Bonds and/or coupons in the aggregate principal amount covered by the Certificate of Deposit held by him and/or anything then held by the Depositary and/or the Committee as proceeds thereof or in lieu thereof, in accordance with the interest of such Depositor therein as determined by the Committee, but only upon surrender of his Certificate properly endorsed in blank and upon payment of such amounts as the Committee, in its absolute discretion, may fix as his pro rata share of the

disbursements, expenses and liabilities (including counsel fees) made or incurred by the Committee and of the compensation and expenses of the Depositary and Sub-Depositaries. The exercise of such right of withdrawal shall release and discharge the Committee and the Depositary and their officers, agents and attorneys from any and all liability at law or in equity, in tort or in contract, known or unknown, fixed or contingent, or of any nature or character whatsoever, as to each such withdrawing Depositor. Such plan or agreement shall be binding upon all Depositors who shall not have filed dissent and made such withdrawal within the period and in the manner above provided, their heirs, legal representatives, successors and assigns, all of whom shall be conclusively deemed to have assented thereto, whether they shall have received actual notice thereof or not, and shall be irrevocably bound and concluded by the same.

The Committee is hereby authorized and empowered (whether before or after the adoption or submission of any plan or agreement) to adopt, approve or accept any amendment to or modification of any plan or agreement so formulated, adopted, accepted or approved, or supplement thereto, or to adopt, approve or accept a new plan or agreement in lieu thereof. Copies of such amendment, modification or supplement thereto or of any such new plan or agreement shall be filed, notice thereof shall be given and modifications thereof may be effected and withdrawals made, all in the same manner and with the same effect as herein provided with reference to the original plan or agreement; provided, however, that if in the opinion of the Committee, which shall be conclusive and binding upon the Depositors, such amendment, modification or supplement does not affect the rights of the Depositors hereunder to their substantial detriment, no notice of the adoption, approval or acceptance thereof shall be necessary, and upon the filing with the Depositary of copies of such modification, amendment or supplement and of the approval thereof by the Committee, the same shall become binding upon all the Depositors.

The Committee is hereby fully authorized and empowered in its sole and absolute discretion, at such times as it may deem expedient, to declare any such plan or agreement or modified plan or agreement operative and to carry out any such plan or agreement or modified plan or agreement on behalf of all the Depositors who shall

67 not have dissented within the period and in the manner hereinbefore specified. Notwithstanding that the Committee has approved and adopted any plan and/or agreement or modified plan and/or agreement or reorganization or readjustment, and has submitted the same to the Depositors, and the said Depositors shall have been conclusively deemed to have assented thereto as herein provided, the Committee may, nevertheless, without submission to the Depositors of the question of abandonment of such plan and/or agreement, or modified plan and/or agreement, abandon such plan or agreement, or any modified plan or agreement, and terminate the same. In case the Committee shall finally abandon a plan or agreement or a modified plan or agreement which may have been adopted, and shall not desire then or thereafter to substitute any other plan or agreement therefor, the Bonds and coupons deposited or held hereunder, or their proceeds, substitutes or avails then under the control of the Committee, shall be delivered to the several Depositors or their transferees in amounts representing their respective interests as determined by the Committee, but only upon surrender of their respective Certificates of Deposit properly endorsed in blank, and upon the payment of their proper proportionate shares of such disbursements, expenses and liabilities, if any, as shall have been paid or incurred by the Committee together with a pro rata share of the compensation and expenses of the Depositary, and any Sub-Depositaries, and the Committee shall have full and absolute power to determine and to apportion the share of such disbursements, expenses and liabilities to be borne by each Depositor.

Section 2. The title of any securities, property or moneys acquired and/or to be acquired by the Committee prior to, upon, or subsequent to the consummation of any such plan or agreement of reorganization or readjustment as aforesaid, may, in the discretion of the Committee, be vested in a corporation to be organized by the Committee, or may be vested in a trustee or trustees (who may, but need not, be a member or members of the Committee), or the title to such securities, property or moneys may be held in such other manner as the Committee may determine and the Committee may in its discretion cause such corporation or trust to assume liability for or to pay any expenses and obligations of the Committee. The Committee, in its discretion, may at



any time distribute any moneys it may then hold, together with any obligations, securities, stock, and/or certificates of beneficial interest of any such corporation, trust and/or trustee or trustees then held by it, to the Depositors ratably and in proportion to their several and respective interests as determined by the Committee, or the Committee may, in its discretion, hold the said securities, property or moneys and at such time or times as it may deem advisable sell the same or any part or parts thereof for cash or upon credit or convert the said property or securities, or any part thereof, into money or obligations for the payment of money, and distribute the same or the proceeds thereof, and the moneys, if any, theretofore held, to the Depositors ratably and in proportion to their respective interests determined as aforesaid. Before any such distribution, the expenses and obligations of the Committee together with the compensation and expenses of the Depository and any Sub-Depositories shall be paid or provided for. After any such distribution of all assets held by or for it, the Committee shall be relieved from all liability hereunder. The accounts kept and the distribution made by the Committee shall be final as to calculation and amount.

As long as the Committee shall hold any property or securities, the Committee may manage, control, vote upon or otherwise deal with the same in such manner as it may deem advisable and may enter into agreements providing for the voting of any stock held by the Committee, or may distribute voting trust certificates to the Depositors in lieu of any such stock.

In the event that the Committee shall cause title to any property to be vested in any trust for the benefit of itself or of the Depositors, under which the trustee or other officer or agent is required to issue certificates representing shares of beneficial interest therein, the agreement or declaration establishing such trust shall be in such form and shall contain such provisions, terms, stipulations and conditions and shall confer such powers on the trustees, officers and committees of such trust, as the Committee may deem proper or advisable. It is expressly provided, however, that any agreement or declaration establishing any such trust as aforesaid shall contain stipulations satisfactory to the Committee to the effect that the rights and interests of the holders of its certificates for shares of beneficial interest, shall be only in the proceeds, rents, issues and avails of the trust property



and shall not be, or constitute an interest legal or equitable in any real estate held by such trust and that the rights and interests of such holders therein shall at all times and for all purposes be deemed to be personal property. In the event that the Committee should cause certificates of beneficial interest in any such trust to be distributed to Depositors hereunder without the adoption of any plan or agreement of reorganization or 68 readjustment, the agreement or declaration establishing such trust shall also provide that neither the trustee nor any of its officers or committees shall thereafter sell all or substantially all of the assets of the trust to third parties unless and until notice of the intention to make such sale shall have been mailed to the registered holders of its certificates for shares of beneficial interest, and shall further provide that such sale shall not be made if the holders of certificates representing one-third of all shares of beneficial interest then outstanding shall advise the trustee of said trust in writing within twenty (20) days after the date of the mailing of such notice that they object to the making of such sale. Such limitations on the authority of any such trustees, officers and committees, as aforesaid, need not apply, however, to any mortgage or pledge of such properties or securities or to any sale or transfer of such properties to a corporation whose shares are to be distributed in whole or in part in exchange for such shares of beneficial interest.

In the event that the Committee shall elect to distribute certificates for shares of stock in a corporation, or certificates for shares of beneficial interest in a trust, or notes, bonds or other securities issued by any such corporation or trust to the Depositors, the Committee may, in its discretion cause any interests of a Depositor in a fraction of any share or security to be adjusted out of any cash that it may have on hand or may cause warrants for fractional interests in any such securities to be issued to Depositors. Such warrants shall not represent any beneficial interest in such shares or securities until consolidated with other warrants aggregating one whole share or interest and provision may also be made that such warrants shall be void if not so consolidated with other warrants within such time as the Committee may determine.

Anything herein to the contrary notwithstanding, in the event that any property acquired or held by the Commit-

tee, or held by a trustee or trustees under any trust established by the Committee, shall not be sold within six months before the expiration of the period during which said property may lawfully be held by or for such Committee or in such Trust, the Committee is hereby authorized and any such trust may be authorized to cause all such properties to be sold at any time within such final six months of such lawful period without requiring notice to or the consent of any Depositor or holder of certificates or shares of beneficial interest, and to distribute the proceeds and avails thereof to and among the persons then entitled thereto.

The Committee may exercise any of the powers or authorities conferred upon it by this Section 2 of Article IV of this Agreement without submitting its action to the Depositors for their approval or dissent.

#### Article V.

##### Meetings of Depositors.

Any matter or question not herein provided for, or any matter or question suggested by the Committee, or any amendment of the terms or provisions of this Agreement, may in the sole discretion of the Committee be submitted to the Depositors at a meeting to be held at any place within the State of Illinois, and called by telegram delivered for sending at a telegraph office in Chicago, Illinois, at least seventy-two (72) hours before the time of said meeting, or by letter mailed with postage prepaid, at least ten (10) days before the day of such meeting, such letter or telegram being addressed to each Depositor at his address as shown by the records of the Depositary, subject, however, to the provisions of Section 4 of Article X hereof, or by both telegram and mail. Any such meeting may be called only by or at the direction of the Committee. A quorum for the transaction of business at any such meeting of Depositors shall consist of Depositors holding Certificates representing a majority in principal amount of the Bonds deposited hereunder, but less than a quorum may adjourn such meeting from time to time without notice other than announcement at the meeting until such time as a quorum shall be present. Depositors may be represented at such meeting either in person or by proxy, which proxy may, but need not, be the Committee or any member or members thereof. The

records of the Depositary shall constitute the sole and exclusive evidence as to the holders of Certificates and the amount of Bonds and matured coupons covered thereby. The procedure at any such meeting shall be determined by the Committee except as herein otherwise provided.

Any matter, question or amendment approved or adopted by the holders (or proxies) of Certificates for a majority of the Bonds represented at any such meeting at which a quorum is present shall be binding and conclusive upon all parties hereto, provided, however, that no amendment to this Agreement shall change or alter the powers, rights, duties, obligations or liabilities of the Depositary or of the Committee without their respective consents thereto in writing.

#### Article VI.

##### Records of the Committee.

The Committee shall keep books showing its receipts and disbursements and a record of its proceedings, and upon the termination of its duties a final account of its expenses and disbursements shall be filed with the Depositary, and thereupon the Committee, and each member thereof, shall be discharged from all its or his duties, liabilities or obligations as to all Depositors hereunder. The Committee shall not be required to make any report or accounting other than said final account.

#### Article VII.

##### Termination of Agreement.

The Committee may, at any time (whether before or after the adoption or submission of any plan or agreement), terminate this Agreement whenever it shall deem it advisable so to do by giving notice of such termination to each of the Depositors by letter, mailed, with postage prepaid, at least ten days before such termination, addressed to each Depositor in the manner provided by, and subject to the provisions of, Section 4 of Article X hereof; and this Agreement shall be terminated whenever the termination thereof shall be requested in writing or writings filed with the Depositary by Depositors holding Certificates representing eighty per cent (80%) in principal



amount of the Bonds deposited hereunder, but only on such terms as shall satisfy all obligations of the Committee. The termination of this Agreement shall not affect any provisions, assents, acts, agreements or proceedings, whether of a legal nature or otherwise, that the Committee has made, done or instituted, prior to such termination. In the event of such termination of this Agreement, the Depositors, upon the payment of the disbursements, expenses and liabilities (including counsel fees) made or incurred by the Committee, together with the compensation and expenses of the Depositary and any Sub-Depositaries, and upon the surrender to the Depositary of their Certificates endorsed in blank, shall be entitled to their pro rata share as determined by the Committee of all property, securities and cash held subject hereto.

#### Article VIII.

##### Liability of Committee and Depositary.

Section 1. Neither the Depositary nor any Sub-Depositary nor the Committee nor any of its members shall be answerable or liable for the acts or omissions of any officer, employee, agent or attorney appointed and selected with reasonable care, nor be under any obligation or liability not affirmatively expressed in this Agreement nor shall any member of the Committee or the Depositary or any Sub-Depositary be responsible to anyone for the acts or omissions of any other nor be responsible or liable to any one for any matter or thing relating to this Agreement except for his or its own actual bad faith in the discharge of duties or the exercise of powers hereunder.

Section 2. The Committee and each member thereof and the Depositary and each Sub-Depositary shall always be protected and free from all liability in acting upon any bond, coupon, notice, request, consent, receipt, certificate, guaranty, affidavit, telegram or other like or unlike paper or document or signature believed by it or by any member of the Committee or by the Depositary or Sub-Depositary, or any of them, as the case may be, to be genuine and to have been signed or sent by the proper party or parties, or by the party or parties purporting to have signed or sent the same.

Section 3. Neither the Committee nor any member of the Committee shall be personally liable for any act or



omission of the Depositary or any Sub-Depositary. Neither the Depositary nor any Sub-Depositary shall be liable for any act or omission of the Committee or any member thereof, and the opinion, decision, order, direction or approval of the Committee with reference to any and all business, matters and things acted upon by the Committee, expressed in writing by a majority thereof or certified to the Depositary or any Sub-Depositary by the Chairman or the Secretary of the Committee to have been issued, made or adopted by the Committee, shall be a complete justification to the Depositary or any Sub-Depositary for any action taken by such Depositary pursuant thereto or if so certified to any other person, firm or corporation may be relied upon by such person, firm or corporation in dealing with the Committee or in acting with respect to any matter affected by this Agreement. The Committee shall not be liable for any mistake of fact or law, whether as to the validity or priority of any claim, lien, or title in, to, or against the Trust Property or any other property that it may acquire or deal with hereunder or in any other matter whatsoever. The Committee and the Depositary may act in full reliance upon any statements or opinions of any title company, attorney at law, accountant, statistician, employee, and any other person believed by it or them to be competent in the matter upon which they are consulted, and for anything done or suffered in good faith based on such advice or information, neither the Committee, nor the Depositary shall be liable to anyone.

Section 4. Neither the Committee nor the Depositary shall be responsible for the financial condition of any person, corporation or trust whose securities shall be accepted in exchange for any property or securities held by or for the Committee hereunder.

No statement, explanation or suggestion contained in this Agreement or in any plan adopted hereunder, or in any notice, telegram, letter or circular or advertisement issued, delivered or published by the Depositary or any Sub-Depositary or by the Committee, is intended or is to be accepted as a representation or warranty or as a condition of deposit or assent under this Agreement or any agreement amendatory hereof or supplemental hereto. No defect or error shall release any deposit under this Agreement or affect or release any assent hereto except by the written consent of the Committee.

Section 5. The Committee and the Depositary, their officers, agents and attorneys, shall be released from all liability and accountability of every kind, character or description whatsoever by the acceptance by the holders of a majority in amount of outstanding Certificates of any property, securities, money or benefits distributed by the Committee and the surrender of their Certificates, except that the Committee shall continue obligated to make delivery of a like pro rata amount as determined by the Committee of property, securities, money or benefits to the other holders of Certificates upon the surrender of such Certificates; and the acceptance of such property, securities, money or benefits hereunder by any Depositor shall conclusively and finally estop him, and such acceptance by a majority in amount of the Depositors shall conclusively and finally estop all the Depositors from asserting or claiming that the action of the Committee in the distribution and delivery of such property, securities, money or benefits fails in any particular to conform to any of the provisions of this Agreement, or any plan or agreement, or modified plan or agreement which may be adopted hereunder.

Section 6. The Depositary and any Sub-Depositary shall be entitled to compensation for its or their services, in an amount to be agreed upon with the Committee, and also to reimbursement for any and all expenses and disbursements including counsel fees, incurred by them in connection herewith.

Section 7. The Committee, or any member thereof, or its officers, agents and employees, shall not be personally liable for any debts contracted by them, or any of them, or upon any contract, agreement or other obligation entered into by them, or any of them, or for damages to persons or property incurred by them, or any of them, or for damages to persons or property of any kind whatsoever, or for salaries or non-fulfillment of contracts, and it is expressly agreed that any and all such liabilities or obligations shall constitute liabilities or obligations solely against the property held by the Committee.

Section 8. The Depositary and any Sub-Depositary shall not be liable for interest on any moneys received by them hereunder, and may keep any such moneys in their own custody or may deposit any such moneys with any bank or trust company having an aggregate capital and surplus of not less than \$1,000,000. No requirements of

any rule of law or statute now or hereafter in force regarding the investment or segregation of trust or other funds shall apply to such moneys so held in custody by the Depositary or any Sub-Depositary, and the Depositary or any Sub-Depositary shall not be responsible for the solvency of any bank or trust company to which it may intrust such moneys in good faith.

#### Article IX.

##### Removal, Resignation or Merger of Depositaries.

Section 1. The Committee shall have the power to remove any Depositary, and the Depositary may resign as such by sending written notices by registered mail, addressed to the Chairman and to the Secretary of the Committee at their respective addresses last known to the Depositary. Any such resignation shall take effect upon the date specified in such notices, which date, however, shall not be less than ten days after the mailing thereof, unless the Committee shall waive such requirement and accept a shorter notice. In the event of the removal or resignation of any Depositary hereunder, a successor Depositary shall be appointed by written instrument (executed at least in duplicate) signed by a majority of the members of the Committee. Such successor Depositary shall be a trust company or a state or national bank situated in the City of Chicago, Illinois, having a paid-up capital of not less than \$1,000,000, if there be such a trust company or bank willing and able to act as Depositary upon reasonable or customary terms, and, if not, then any bank or trust company approved by the Committee. Upon such appointment being lodged with such resigning or removed Depositary and with such successor Depositary, the said successor Depositary shall thereupon have all the powers of said resigning or removed Depositary, as if originally appointed Depositary hereunder. Upon payment to said resigning or removed Depositary of its compensation fees, costs, expenses and disbursements, it shall turn over to said successor Depositary, all records, bonds, coupons, moneys, securities, and property, remaining deposited hereunder, or held by it as Depositary hereunder, and thereupon such former Depositary shall be relieved of all liability hereunder, except for its own willful misconduct.

The Depositary may at any time remove or accept the



resignation of any Sub-Depositary, as such, upon such terms and conditions as the Depositary and the Committee may approve, and upon receiving the written consent of the Committee, the Depositary may appoint a successor to any such Sub-Depositary.

Section 2. Any company into which the Depositary or any Sub-Depositary may be merged or with which it may be consolidated, or any company resulting from any merger or consolidation to which the Depositary or any Sub-Depositary shall be a party, shall be the successor of such Depositary or Sub-Depositary without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein contained to the contrary notwithstanding, and such successor may execute any Certificates either in its own name or in the name of its predecessor. In case any Certificates provided for hereunder shall have been executed but not delivered, any such successor depositary or Sub-Depositary may adopt the execution of such Certificates by its predecessor and deliver the same to the Depositor or to any person entitled thereto.

## Article X.

### Notice to Depositors and Miscellaneous.

Section 1. Unless such meaning is inconsistent with the context thereof, the terms "Bond" or "Bonds," whenever used herein, shall be deemed to include all unpaid interest coupons appertaining thereto, whether matured or unmatured, and also any certificates of deposit, deposit receipts or other instruments representing such bonds and/or coupons or any interest therein that may be deposited hereunder in accordance with the provisions of Section 5 of Article I of this Agreement.

Section 2: The word "Secretary" shall be deemed to include any Assistant Secretary of the Committee.

Section 3. This Agreement shall be construed solely as an agreement among the parties hereto, and solely affecting and relating to the Committee, the Depositors, the Depositary and any Sub-Depositary, and neither the owners or holders of Bonds and/or coupons not deposited or subjected to the operation of this Agreement in accordance with the provisions hereof, nor any other person, firm or corporation, shall have any rights whatsoever hereunder. This Agreement shall bind and inure to the



benefit of the several parties hereto and each of them, and the heirs, executors, administrators and assigns of the Parties of the Second Part.

Section 4. The Committee, the Depositary or any Sub-Depositary, may assume for the purpose of giving notices to the Depositors, that the persons registered on the books of the Depositary or Sub-Depositaries, as the holders of outstanding Certificates, are the only true owners thereof. Upon or prior to receiving any Certificate of Deposit, the owner or holder thereof shall advise the Depositary or Sub-Depositary issuing such Certificate, in writing, of his correct post office address and shall subsequently notify the Depositary in writing of any change in such address. Every such notice of change of address shall clearly describe the issue of bonds represented by the Depositor's Certificate and shall give the "C. D. No." that appears in the upper left hand corner thereof. The mailing of any notices or other documents, postage prepaid, addressed to the holder of a Certificate at his address as shown on the records of the Depositary or Sub-Depositary, shall be deemed to be and shall be, a sufficient sending of such notice or other document to the holder or owner of such Certificate. Notwithstanding anything in this Agreement to the contrary, no notice need be given or mailed to any Depositor who fails to supply a correct post office address in the manner hereinbefore provided, and any Depositor who shall fail in such respect shall be conclusively deemed to have waived all obligation on the part of the Committee or of the Depositary to give him any notice herein provided for.

72 The affidavit of the Chairman or Secretary of the Committee that any notices and/or other documents have been mailed to Depositors and as to the dates when such mailings shall have been made, shall be deemed to be, and shall be sufficient and conclusive evidence of all facts and things therein stated and all Depositors shall be concluded thereby.

Certificates of Deposit, securities, stock certificates, bonds, notes, checks, and any other property which at any time may be issuable or distributable to a Depositor may be mailed to such Depositor at his address appearing on the books of the Depositary, but such mailing shall be at the risk of such Depositor.

Section 5. The Committee may as a condition precedent to any partial distribution require the presentation of Certificates for the notation thereon of such distribution,

but the Committee may make any distributions without making such notations.

Section 6. References in this Agreement to the Obligor, unless the context otherwise indicates, shall be deemed to include all successors to any of the property of the Obligor or to any interest therein and any receiver or receivers of the Obligor or any of its property and any corporation or corporations stock in which is owned or controlled by the Obligor. Any action which the Committee may take hereunder with respect to the Obligor or any of its property or securities, may be taken by the Committee with respect to any such successor or receiver, or any corporation in which stock is owned or controlled by the Obligor, or with respect to any property owned, possessed or controlled, or securities issued by, any successor, receiver or corporation.

Section 7. Any determination by the Committee as to the share or interest of any Depositor in any securities or property at any time held hereunder, or as to the amount of expenses, liabilities and disbursements apportionable to any Depositor for any of the purposes of this Agreement, shall be final and binding on all parties hereto.

Section 8: Any successor Depository or Sub-Depository and all successor and additional members of the Committee shall be entitled to the same rights, powers and immunities as their predecessors in office.

Section 9. Titles to Articles shall not be deemed to constitute any part of this Agreement.

## Article XI.

### Chairman and Secretary of the Committee.

C. S. Tuttle is hereby designated and selected as Chairman of the Committee, and Howard E. Green is hereby designated and selected as Secretary and Harley Halvorsen as Assistant Secretary of the Committee, and they shall respectively continue to act as such officers until their successors are appointed in the manner provided by Article II hereof.

## Article XII.

## Execution of Agreement.

Section 1. The members of the Committee by their signatures to this Agreement signify their consent to accept and exercise such powers and authorities (subject to the terms thereof) as may be conferred upon them by the terms and provisions of this Agreement. This Agreement may be executed by the members of the Committee in one or more counterparts, and all of such counterparts shall constitute the original Agreement. This Agreement shall take effect and be operative upon the Depositors hereunder, irrespective of the number of Bonds and/or coupons that may be deposited hereunder. Upon this Agreement being signed by any three members of the Committee in person or by duly authorized attorneys in fact, the Committee shall be deemed to be constituted and this Agreement shall become effective as to the members so signing.

In Witness Whereof, the members of the Committee, as Parties of the First Part, have hereunto set their hands and seals as of the day and year first above written, and the Depositors, as Parties of the Second Part, evidence  
73 their assent hereto by their respective deposits hereunder of said Bonds, coupons and/or other instruments in the manner hereinbefore provided.

C. S. Tuttle	(Seal)
Edward S. Clark	(Seal)
Lewis W. Riddle	(Seal)
W. G. Sturm	(Seal)

*Committee.*

To evidence its acceptance of the duties of Depositary hereunder, Central Republic Trust Company has caused this Agreement to be signed in its corporate name by one of its Vice-Presidents, and its corporate seal to be affixed and attested by one of its Assistant Secretaries, all as of the day and year first above written.

Central Republic Trust Company,  
By H. W. Hawkins,  
Vice-President.

(Corporate Seal)

Attest:

W. T. Anderson,  
Assistant Secretary.

74 And afterwards, to wit, on the 24th day of May, A. D. 1937, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

Entered  
May 24,  
1937.

75 IN THE DISTRICT COURT OF THE UNITED STATES.  
\* \* (Caption—65811) \* \*

### ORDER.

This cause coming on to be heard upon the petition of Charles S. Tuttle, Albert J. Peterson, Louis W. Riddle, William G. Sturm and E. A. Kilmer, presently constituting the Protective Committee (hereinafter sometimes called the "Committee") under and pursuant to a certain Deposit Agreement dated April 25, 1933, with respect to the First Mortgage 6% Real Estate Gold Bonds (hereinafter sometimes referred to as "First Mortgage Bonds"), secured by Trust Deed dated December 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, as Trustee, conveying therein the property and assets of Debtor; and the Court having heard the arguments of counsel and being fully advised in the premises;

It Is Ordered:

1. That leave be and the same is hereby granted to the Committee to file herein its said Intervening Petition pertaining to these proceedings, and to become a party in these proceedings for all proper purposes, and that notice of all motions and hearings herein shall be served upon Defrees, Buckingham, Jones & Hoffman, 105 South La Salle Street, Chicago, Illinois, counsel for the Committee;

76 2. That leave be and the same is hereby granted to the Committee to file herein instanter its Plan of Reorganization of Debtor, dated May 21, 1937;

3. That creditors and stockholders of the Debtor may file written objections to the said Plan of Reorganization with the Clerk of this Court on or before June 23rd, 1937, which objections shall set forth, among other things, the principal amount of the claim or the number of shares, as the case may be, held by the objector, and a copy of such



objections shall be served upon Defrees, Buckingham, Jones & Hoffman, 105 South LaSalle Street, Chicago, Illinois, counsel for the Committee, prior to the filing thereof;

4. That for the purposes of any Plan of Reorganization that may be presented in these proceedings, and its acceptance, the creditors and stockholders of the Debtor are divided into the following classes according to the nature of their respective claims and interests:

**Class 1:**

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, entitled to priority under Section 77B of the Bankruptcy Act, as amended.

**Class 2:**

Claim of City National Bank and Trust Company of Chicago, as allowed in these proceedings, as Successor-Trustee under the Trust Deed securing First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928, from Granada Hotel Corporation, a corporation, to Chicago Trust Company, as Trustee, for amounts due it for its own use and benefit, as established by decree of foreclosure of said Trust Deed entered December 18, 1936, in proceedings pending in the Superior Court of Cook County, Illinois, in Cause Numbered 519151.

**77 Class 3:**

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, except with respect to said First Mortgage 6% Real Estate Gold Bonds comprised in Class 4 hereof.

**Class 4:**

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a

corporation, as Trustee, except with respect to said First Mortgage 6% Real Estate Gold Bonds comprised in Class 4 hereof.

Class 4:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, with respect to Bonds numbered M-141 to M-165, both inclusive.

Class 5:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to Second Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee.

Class 6:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to Promissory Chattel Mortgage Note secured by Chattel Mortgage dated August 23, 1933.

Class 7:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to the shares of Preferred Stock of Granada Apartments, Inc.

78 Class 8:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to the Common Stock of Granada Apartments, Inc.

Class 9:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, of whatever character, other than as above in the foregoing Classes 1 to 9, inclusive, enumerated, whether the same be secured or unsecured or evidenced by written instrument.

It is not intended by the foregoing enumerated classes to indicate any preference or priority of any one class over any other class.

5. That claims relating to administrative costs and expenses in these proceedings, as provided in Section 77B of the Bankruptcy Act, as amended, be and hereby are excluded from the scope of this order, so far as the same relate to the time of filing or the manner of proving or evidencing such claims; and provision is to be made by further order of the Court for such filing and proving or evidencing and for the allowance thereof.

6. That all claims and interests against the Debtor or its property, as set forth in the foregoing Classes 1 to 9, inclusive, shall be evidenced by filing with Carl R. Chindbloom, hereby appointed as Special Master herein, for the purposes herein contained, at his office at 7 South Dearborn Street, Chicago, Illinois, on or before June 23rd, 1937, a verified proof of claim substantially in the form prescribed by Section 57 (a) of the Bankruptcy Act, as amended, having attached thereto where such claim or  
79 interest is evidenced by a written instrument, the original instrument, except as otherwise hereinafter provided.

Further, within the time limit hereinabove set forth, the respective trustees under the respective trust deeds under which the said First Mortgage 6% Real Estate Gold Bonds and Second Mortgage 6% Real Estate Gold Bonds were issued are authorized to file a claim or claims in this cause with said Special Master herein on behalf of the holders of such respective bonds and coupons and interest pertaining thereto. Any claim so filed may be filed without attaching thereto either the original or copies of the respective bonds or interest coupons outstanding under or secured by said respective trust deeds, or without attaching said respective trust deeds or copy thereof. Each claim in respect of any said bond or interest coupon hereinafter filed in this cause by the owner or holder thereof, or by the duly authorized agent, shall, when such claim is proved and allowed, reduce pro tanto the said respective claims filed herein by the said respective successor trustees with respect thereto.

The Committee may file with the said Special Master, within the time limit hereinabove set forth, a claim or claims upon and in respect of bonds and interest coupons deposited under said Deposit Agreement, and in lieu of



filing with said claim or claims the bonds and interest coupons so on deposit, said Committee may file the certificate or certificates of the Depositary of said Committee, certifying the amount of bonds and interest coupons held under the aforesaid Deposit Agreement.

80 7. Upon receipt by the said Special Master of a verified proof of claim or interest, accompanied by the original of the bond, interest coupon, note, certificate of stock, or other written instrument, evidencing said claim or interest, in respect of which said claim or interest is filed, the Special Master shall cause such bond, interest coupon, note, stock certificate, or other written instrument, to be stamped with the following legend:

"Proof of claim representing this instrument has been filed with the undersigned, as Special Master appointed by the District Court of the United States for the Northern District of Illinois, Eastern Division, in cause therein pending entitled, 'In the Matter of Granada Apartments, Inc., a Corporation, Debtor, numbered 65811.'

Special Master."

and upon the stamping of said legend upon said bond, interest coupon, note, stock certificate, or other instrument, the same may be returned to the claimant, if the claimant shall so request, upon payment by such claimant to said Special Master of an amount sufficient to cover the registered mailing thereof, and upon the filing by such claimant of a photostatic copy of said bond, interest coupon, note, stock certificate, or other instrument. If no photostatic copy is filed, the original of said bond, interest coupon, note, stock certificate, or other written instrument,

shall be retained by the Special Master until the date  
81 herein fixed as the date on or before which objections to claims must be filed, or until such other date as the Court may fix as such date for the filing of objections to claims. After said date, the original of said bond, interest coupon, note, stock certificate, or other written instrument, may be returned to the claimant, if the claimant shall so request and shall pay to the Special Master an amount sufficient to cover the cost of the registered mailing thereof, without the filing by such claimant of a copy of said bond, interest coupon, note, stock certificate, or other written instrument.

8. No stock certificate or certificates shall be issued in exchange for or upon the transfer of any stock certificate stamped as aforesaid, without first presenting such new



certificate or certificates to the Special Master in order that a similar legend may be affixed by the Special Master to such new certificate or certificates.

9. All claims and interests, duly filed or evidenced within the time and in the manner hereinabove specified, shall be allowed by this Court in due course, without taking further proofs thereof, unless the Court shall otherwise determine or unless on or before July 3rd, 1937, or within such further time as the Court may allow; written objections to the allowance of any such claim or interest shall have been filed with the Special Master, in which event the claims or interests to which the objections shall have been filed shall be proved in accordance with law, provided that prior to the filing of such objections a copy thereof shall be served upon Defrees, Buckingham, Jones & Hoffman, 105 South LaSalle Street, Chicago, Illinois, counsel for the Committee.

10. The Special Master shall report to the Court as soon as may be after the date herein fixed for filing objections to claims, the names of all persons filing claims and interests, the class in which each such claim or interest belongs, and the amount of such claim or interest, noting any objections or objections which may have been filed to the allowance of any such claim or interest.

11. That a hearing is set for July 9th, 1937, at 10:00 o'clock A. M., before the Honorable John P. Barnes, or before such other Judge as may then be sitting in his place and stead, in the room usually occupied by him as a court room, in the United States Court House, Chicago, Illinois, for the following purposes:

(a) The consideration of and the allowance or disallowance of claims and interests filed in these proceedings;

(b) The consideration of and hearing on any objections filed in these proceedings to the determination made of the division of creditors and stockholders of the Debtor into classes;

(c) The proposal by the Committee and the consideration by the Court of the Plan of Reorganization filed herein by the Committee;

(d) The proposal and consideration of any other Plan of Reorganization which may properly be proposed in these proceedings;

(e) The consideration of any amendments or objections which may be properly presented in these proceedings to the Plan of Reorganization filed herein by the Committee,

or to any other Plan of Reorganization which may be so properly proposed in these proceedings;

83 (f) The confirmation of such Plan of Reorganization; subject to acceptance thereof by or on behalf of the persons required by Section 77B of the Bankruptcy Act, as amended, to accept a Plan of Reorganization as a prerequisite to a confirmation thereof by the Court;

(g) The entry of any and all orders deemed by the Court to be necessary and proper for the consummation and the carrying into effect of any Plan of Reorganization which may be confirmed by the Court, including the determination of the allowances to be made for fees and expenses;

(h) The determination of all other matters germane to these proceedings; and

12. That the creditors and stockholders whose claims have been allowed herein may, at any time up to the time of the confirmation of the said Plan of Reorganization, accept said Plan of Reorganization by filing or causing to be filed written acceptances thereof executed in person or by a duly authorized agent or attorney in the form substantially as hereinafter set forth with Carl R. Chindbloom, as Special Master, at his office at 7 South Dearborn Street, Chicago, Illinois;

13. That Weightstill Woods, Trustee heretofore appointed in these proceedings, be and he hereby is directed to cause to be sent by mail within fifteen (15) days after the entry of this order, to the creditors and stockholders of the Debtor and claimants against its property (except holders of claims falling within Classes 3 and 4, as above designated), as the same may appear upon the books and records of the Debtor, or as may be known, at their last known post office addresses, as the same may appear on the books and records of the Debtor, or as may be known, a copy of the following:

(a) A copy of the said Plan of Reorganization filed herein by the Committee;

(b) A copy of a notice, entitled in this cause, in substantially the following form, to-wit:

84 "IN THE DISTRICT COURT OF THE UNITED STATES  
• • (Caption—65811) • •

## NOTICE.

To All Creditors and Stockholders of Granada Apartments, Inc.:

Notice is hereby given that pursuant to order entered herein on May 24, 1937, this notice was directed to be given and the following, among other things, were determined, ordered, and directed:

1. That Charles S. Tuttle, Albert J. Peterson, Louis W. Riddle, William G. Sturm, and E. A. Kilmer, presently constituting the Protective Committee (hereinafter sometimes called "Committee"), acting under a certain Deposit Agreement dated April 25, 1933, were granted leave to submit a Plan of Reorganization of the Debtor formulated by the Committee to creditors and stockholders of the Debtor;

2. That for the purposes of any Plan of Reorganization that may be presented in these proceedings and its acceptance, the creditors and stockholders of the Debtor are divided into the following classes according to the nature of their respective claims and interests:

## Class 1:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, entitled to priority under Section 77B of the Bankruptcy Act, as amended.

## Class 2:

Claim of City National Bank and Trust Company of Chicago, as allowed in these proceedings, as Successor-Trustee under the Trust Deed securing First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928, from Granada Hotel Corporation, a corporation, to Chicago Trust Company, as trustee, for amounts due it for its own use and benefit, as established by decree of foreclosure of said Trust Deed entered December 18, 1936, in proceedings pending in the Superior Court of Cook County, Illinois, in Cause Numbered 519151.

## 85 Class 3:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, except with respect to said First Mortgage 6% Real Estate Gold Bonds comprised in Class 4 hereof.

## Class 4:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, with respect to Bonds numbered M-141 to M-165, both inclusive.

## Class 5:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to Second Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee.

## Class 6:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to Promissory Chattel Mortgage Note secured by Chattel Mortgage dated August 23, 1933.

## Class 7:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to the shares of Preferred Stock of Granada Apartments, Inc.

## Class 8:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to the Common Stock of Granada Apartments, Inc.



## Class 9:

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property of whatever character, other than as above in the foregoing Classes 1 to 9, inclusive, enumerated, whether the same be secured or unsecured or evidenced by written instrument.

86 3. That all claims and interests of creditors and stockholders included in Classes 1 to 9, both inclusive, shall be evidenced by filing with Carl R. Chindbloom, as Special Master herein, at his office at 7 South Dearborn Street, Chicago, Illinois, on or before June 23, 1937, a verified proof of claim substantially in the form prescribed in Section 57 (a) of the Bankruptcy Act, as amended, having attached thereto whether said claim or interest is evidenced by a written instrument the original of said instrument, except as otherwise provided in paragraphs 3 and 4 next succeeding.

4. That the Protective Committee may file a claim or claims with respect to the First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, or deposit with it and in filing a claim or claims with respect thereto shall, in lieu of filing with said claim or claims the bonds and interest coupons so on deposit with it, file the certificate or certificates of its depository certifying the amount of bonds and interest coupons so on deposit.

5. That the respective Trustees (or Successor Trustees) under said respective Trust Deeds mentioned in Classes 3 and 5 hereof, may file their respective verified proof of claim on behalf of all the holders of bonds and interest coupons issued under said respective Trust Deeds, without attaching to said proof of claim the original or copy of any such bonds or interest coupons, or without attaching said respective Trust Deeds or copy thereof. Any claim filed with respect to any of said bonds and interest coupons by any owner or holder thereof, or by his duly authorized agent, when such claim is proved and allowed, shall reduce, pro tanto, any claim filed by said respective Trustees (or Successor Trustees) with respect thereto.

6. That in the case of claims evidenced by a written instrument, the original of such instrument must remain on file with the Special Master until the expiration of

the time within which objections to claims must be filed, unless prior thereto a photostatic copy thereof is filed with said Special Master.

7. That all claims and interests duly filed or evidenced within the time and manner hereinabove specified shall in due course be allowed by the Court without the taking of further proofs thereof, unless the Court shall otherwise determine, or unless on or before July 3, 1937, or within such further time as the Court may allow, written objections to the allowance of any such claims or interest shall have been filed with the said Special Master, in which event the claims or interests to which objections shall have been filed shall be proved in accordance with law, provided that prior to the filing of such objections a copy thereof shall be served on Defrees, Buckingham, Jones & Hoffman, 105 South LaSalle Street, Chicago, Illinois, counsel for the Committee.

87- 8. That creditors and stockholders of Debtor may file on or before June 23, 1937 objections to the said Plan of Reorganization heretofore filed herein by the Committee. Such objections shall be filed with the Clerk of the Court and shall set forth, among other things, the principal amount of the claim, or the number of shares of stock, as the case may be, held by the objector. Prior to the filing thereof, a copy of such objections shall be served on Defrees, Buckingham, Jones & Hoffman, 105 South LaSalle Street, Chicago, Illinois, counsel for the Committee.

9. That a hearing is hereby set for July 9, 1937 at ten o'clock A. M. before the Honorable John P. Barnes in the room usually occupied by him as a courtroom in the United States Court House, Chicago, Illinois, or before such other judge as may be sitting in his place and stead, for the following purposes:

(a) The consideration of and the allowance or disallowance of claims and interests filed in these proceedings;

(b) The consideration of and hearing on any objections filed in these proceedings to the determination made of the division of creditors and stockholders of the Debtor into classes;

(c) The proposal by the Committee and the consideration by the Court of the Plan of Reorganization filed herein by the Committee;

(d) The proposal and consideration of any other Plan of Reorganization which may properly be proposed in these proceedings;

(e) The consideration of any amendments or objections which may be properly presented in these proceedings to the Plan of Reorganization filed herein by the Committee, or to any other Plan of Reorganization which may be so properly proposed in these proceedings.

(f) The confirmation of such Plan of Reorganization, subject to acceptance thereof by or on behalf of the persons required by Section 77B of the Bankruptcy Act, as amended, to accept a Plan of Reorganization as a prerequisite to a confirmation thereof by the Court;

(g) The entry of any and all orders deemed by the Court to be necessary and proper for the consummation and the carrying into effect of any Plan of Reorganization which may be confirmed by the Court, including the determination of the allowance to be made for fees and expenses;

(h) The determination of all other matters germane to these proceedings.

88 10. The stockholders and creditors of Debtor, whose claims have been allowed, may accept the said Plan of Reorganization by filing or causing to be filed written acceptances thereof in form substantially as set forth in said order, with the said Special Master, at any time prior to the confirmation of said Plan of Reorganization.

Weightstill Woods,  
Trustee of Granada Apartments, Inc., a corporation.

Dated....., 1937."

(e) A copy of a form of acceptance of the said Plan of Reorganization in substantially the following form, to-wit:

"IN THE DISTRICT COURT OF THE UNITED STATES  
\* \* (Caption—65811) \* \*

Carl R. Chindbloom, Special Master,  
7 South Dearborn Street,  
Chicago, Illinois.

The undersigned, owner and holder of  
\$..... aggregate principal amount of First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 7, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corpora-

Order.

63

tion, as Trustee, together with appurtenant interest coupons payable on and after March 1, 1932, except with respect to bonds numbered M-141 to M-165, both inclusive;

\$..... aggregate principal amount of First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, together with appurtenant interest coupons payable on and after March 1, 1932 with respect to bonds numbered M-141 to M-165, both inclusive;

\$..... aggregate principal amount of Second Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, together with appurtenant interest coupons attached thereto;

..... shares of Preferred Stock of Granada Apartments, Inc.;

89 ..... shares of Common Stock of Granada Apartments, Inc.;

\$..... aggregate amount of unsecured claims against Debtor or its property;

and hereby acknowledged receipt of a copy of the Plan of Reorganization of Granada Apartments, Inc., a corporation, heretofore filed in the above entitled proceedings by Charles S. Tuttle, Albert J. Peterson, Louis W. Riddle, William G. Sturm and E. A. Kilmer, presently constituting the Protective Committee acting under and pursuant to the said Deposit Agreement dated April 25, 1933, with respect to the First Mortgage 6% Real Estate Gold Bonds, and hereby approves and accepts said Plan of Reorganization.

Dated....., 1937.

.....  
Signature

.....  
Street and Number

.....  
City

.....  
State"

14. (a) The Protective Committee be and hereby is directed to cause to be sent by mail within fifteen (15) days after the entry of this order to each person, as the same appear on the books and records of the Committee, who has deposited with the Protective Committee said First Mortgage 6% Real Estate Gold Bonds and interest



coupons pertaining thereto, at his post office address as the same appears on the books and records of the Committee:

(1) A copy of said Plan of Reorganization of Debtor heretofore filed herein by the Protective Committee;

(2) A copy of the notice in the form set forth in paragraph 13 of this order; and

(3) A copy of such communication or communications as the Committee may deem advisable.

(b) The Committee is directed to cause to be sent by mail within fifteen (15) days from the entry of this order to each holder of said First Mortgage 6% Real

Estate Gold Bonds and interest coupons pertaining thereto, who has not deposited the same with the Committee, as the same may appear on the books and records of the Committee and as may be known, at his Post Office address, as the same appears on the books and records of the Committee, or as may be known, the following:

(1) A copy of said Plan of Reorganization of Debtor heretofore filed herein by the Protective Committee;

(2) A copy of the notice in the form set forth in paragraph 13 of this order; and

(3) A copy of the form of acceptance of the said Plan of Reorganization, as set forth in paragraph 13 of this order.

15. That the said Weightstill Woods, Trustee heretofore appointed in these proceedings be and he hereby is directed to cause to be published a notice in the form set forth in paragraph 13 of this order at least once each week for two successive weeks in a newspaper of general circulation published in the City of Chicago, Illinois, the first of said publications to be made within five (5) days after the entry of this order.

16. That the said Trustee shall make proof of the mailing directed in paragraph 13 and proof of the publication directed in paragraph 15, and the Protective Committee shall make proof of the mailing directed in paragraph 14, by filing within twenty-five (25) days from the date of the entry of this order with the Clerk of this Court the respective certificates of publication and the affidavit of the party or parties having charge of such mailing, stating in substance that such mailing has been caused to be made as heretofore directed.

17. That the Protective Committee be and it hereby is authorized and directed to cause to be printed in such

quantities as the Protective Committee shall determine are needed, the following:

91 (a) The said Plan of Reorganization, and on the first page thereof shall appear in prominent type the following legend:

"The United States District Court Has Authorized The Submission Of This Plan Of Reorganization To Creditors And Stockholders Of The Debtor And Claimants Against Its Property, But It Has Neither Approved Nor Disapproved This Plan."

(b) The notice in the form set forth in paragraph 13 of this order; and

(c) The form of acceptance of the Plan of Reorganization in the form set forth in paragraph 13 of this order.

18. That the said Carl R. Chindbloom, as Special Master be and he hereby is directed to file with the Clerk of this Court on or before the date set for the hearing provided for in paragraph 11 hereof, his report setting forth as to each of the classes 1 to 3, both inclusive, into which the creditors, stockholders, and claimants have been divided,

(a) The principal amount or number of shares, as the case may be, of the claims and interests which have been filed as herein provided;

(b) The aggregate principal amount or the aggregate number of shares, as the case may be, of claims and interests in respect of which acceptances of the Plan of Reorganization have been filed, as herein provided; and

(c) The percentage of the amount or number of shares shown, as the case may be, in (a) represented by the amount and number of shares, as the case may be, as shown in (b).

19. The Court reserves jurisdiction to make from time to time such further orders amplifying, extending, limiting, or otherwise modifying this order as may at any time seem proper to the Court upon such notice or without notice as the Court shall deem proper.

Enter:

Barnes,  
Judge.

Dated: May 24, 1937.

Filed  
May 24,  
1937.

92 And on, to wit, the 24th day of May, 1937, came the Protective Committee by its attorneys and filed in the Clerk's office of said Court its certain Plan of reorganization in words and figures following, to wit:

93 IN THE DISTRICT COURT OF THE UNITED STATES.  
• • (Caption—65811.) • •

### PLAN OF REORGANIZATION OF GRANADA APARTMENTS, INC.

The Protective Committee under and pursuant to the certain Deposit Agreement dated April 25, 1933, with respect to the First Mortgage 6% Real Estate Gold Bonds, secured by Trust Deed dated September 1, 1928, from Granada Hotel Corporation to Chicago Trust Company, as Trustee (Charles S. Tuttle, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer being the present members thereof) represent that there are deposited under said Deposit Agreement in excess of 67% in principal amount of the outstanding unsubordinated First Mortgage 6% Real Estate Gold Bonds of said issue.

For proposal at a hearing duly noticed for its consideration, the Protective Committee submits the following Plan of Reorganization (hereinafter referred to as the "Plan"):

#### General Statement of Debtor's Property.

All of the property and assets of Debtor are to be dealt with by the Plan, and from information available to the Protective Committee such property and assets consist principally of the premises located at 525 Arlington Place, Chicago, Illinois, described as follows:

Lots thirty-two (32) and thirty-three (33) of Outlot "C" in Wrightwood, a Subdivision of the Southwest Quarter of Section twenty-eight (28), Township forty (40) North, Range fourteen (14), East of the Third Principal Meridian, in Cook County, Illinois.

## Indebtedness of Debtor.

From information available to the Protective Committee, it appears that the Debtor has the following capitalization and the indebtedness:

(a) Unpaid General Property Taxes (not including interest and penalties):

*1928 (balance) .....	\$9,041.86	
1931 (balance) .....	2,747.09	
1932 (balance) .....	6,752.60	
1933 (balance) .....	5,016.41	
1934 .....	7,400.38	
1935 .....	8,406.82	\$ 39,366.16

\*Note: This is represented by outstanding  
ing tax certificate.

(b) First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee.

Principal amount of unsubordinated bonds outstanding ..... 485,500.00  
with appurtenant interest coupons maturing March 1, 1932 and thereafter.

94 (Judgment has been taken in the amount of \$4,630 with respect to certain unsubordinated First Mortgage 6% Real Estate Gold Bonds.)

Principal amount of subordinated bonds outstanding ..... 25,000.00  
with appurtenant interest coupons maturing March 1, 1932 and thereafter.

(Note: The first Mortgage 6% Real Estate Gold Bonds have been guaranteed by Fred Mateer, Elof W. Wenstrand and Carl G. Wenstrand.)

(c) Second Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928, from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee.

Principal amount outstanding ..... \$357,000.00  
with appurtenant unpaid interest coupons.



- (d) Promissory Chattel Mortgage Note secured by Chattel Mortgage dated August 28, 1933, held by Successor Trustee under Trust Deed securing First Mortgage 6% Real Estate Gold Bonds as collateral security for the payment of said Bonds.

Principal amount of Note ..... 75,000.00

- (e) Capital Stock—

Preferred stock of the par value of \$100 per share ..... 1000 shares

Common stock of the par value of \$5 per share ..... 1000 shares

The foregoing figures do not include unsecured claims against the Debtor or other interests in its property or assets which may be duly proved and allowed in these proceedings, the amount thereof not being ascertainable until so proved and allowed, and do not include General Property Taxes for the years 1936 and 1937 which now constitute a lien against the real property of Debtor, but which have not as yet been billed, so that the amount thereof is not ascertainable, and do not include franchise or personal property taxes or other like or unlike taxes or assessments (except as set forth above) imposed by public authorities.

There is due and owing City National Bank and Trust Company of Chicago, as Successor Trustee under the Trust Deed securing the First Mortgage 6% Real Estate Gold Bonds, for its own use and benefit, certain sums established by decree of foreclosure of said Trust Deed entered December 18, 1936, in proceedings pending in the Superior Court of Cook County, Illinois, in cause numbered 519151.

There is outstanding a Receiver's Certificate of Indebtedness, dated August 23, 1933, under which there is still due and owing the principal amount of \$4,000, plus interest thereon, which Certificate of Indebtedness was issued pursuant to court order entered in the said foreclosure proceedings above referred to.

There is a Conditional Sales Contract, dated April 12, 1930, by and between Debtor and LaSalle Furniture and Supply Company, covering the furniture located in the said premises of Debtor, under which said contract there is a balance still due and owing of approximately \$3,000.

**Foreclosure Proceedings.**

Proceedings are now pending in the Superior Court of Cook County, Illinois, in cause numbered 519151 for the foreclosure of the Trust Deed securing First Mortgage 6% Real Estate Gold Bonds. In said proceedings a decree of foreclosure was entered on December 18, 1936, but no sale has been had pursuant thereto.

95      **Receivership Proceedings.**

Proceedings are pending in the Circuit Court of Cook County, Illinois, in cause numbered 37-C 3704 in which proceedings, on April 14, 1937, a Receiver was appointed in connection with the property and assets of the Debtor.

**Plan of Reorganization.**

**A. Reorganized Company.**

All property and assets of Debtor shall be conveyed, transferred and assigned to a new corporation, free and clear of all claims of creditors and stockholders of the Debtor, except as otherwise provided in the Plan. The new corporation is hereinafter referred to as "Reorganized Company."

**B. Trust Agreement.**

All of the outstanding shares of stock of the Reorganized Company are to be held and owned under a Trust Agreement by five (5) Trustees who are to issue Participation Certificates representing participating shares (herein sometimes called "Participating Shares") in the Trust covering such shares of stock. Such certificates are herein sometimes called "Participation Certificates." Two of the initial Trustees under such Trust Agreement shall be designated by the Court and three of such initial Trustees shall be designated by the Committee subject to the approval of the Court. The shares of stock shall be issued to the Trustees and Participation Certificates will be issued and distributed in accordance with the provisions of Section C hereof.

The Trust Agreement is to continue in effect for ten (10) years after the date thereof unless terminated or extended as therein provided. The Trust Agreement may be

terminated at any time by the action of a majority of the Trustees or by the action of the holders of Participation Certificates representing a majority of the shares in the Trust, who must also be a majority of the holders of Participating Shares in the Trust. The Trust Agreement shall provide that the question of the termination of the Trust Agreement shall be submitted biennially to holders of Participation Certificates, and if the holders of Participation Certificates representing a majority of the shares in the Trust, who are also a majority of the holders of such shares, shall vote in favor of its termination, the Trust Agreement shall terminate. The Trust Agreement may also be extended by action of a majority of the Trustee, subject to the right of holders of Participation Certificates to withdraw their proportionate amount of shares in the Reorganized Company or to the property held under the Trust Agreement, as therein provided.

The Trust Agreement shall provide that the Trustees shall have power to elect the board of Directors of the Reorganized Company and to vote such shares for any purpose, including a sale of all or substantially all of the assets of the Reorganized Company, and to exercise all other powers of owners of shares of the Reorganized Company, or of any other property or things of value held by the Trust, but that the shares of the Reorganized Company shall not be sold or voted by the Trustees in favor of the sale of the real estate of Debtor, as hereinabove set forth, and that the Trust Agreement shall not be amended in a manner which, in the judgment of the Trustees, would materially and adversely affect substantial rights of the holders of Participation Certificates if, after notice to such holders, the holders of Participation Certificates representing at least one-third of the Participating Shares in the Trust then outstanding shall dissent from any such  
96 proposed action within the time and in the manner provided in the Trust Agreement, but such limitation upon voting in respect of the sale of said real estate shall not apply to voting in respect of any leasing thereof, or of any mortgage of, or the creation of any lien on, the said real estate or on any property used in connection therewith.

The Trustees shall also have power to receive and distribute to holders of Participation Certificates all dividends on and proceeds and avails of shares of the Reorganized Company held by the Trustees, less expenses and prior charges, as provided in said Trust Agreement. Vacancies in the Trustees are to be filled by the remaining Trustee or

Trustees. The Reorganized Company is to pay the expenses and reasonable compensation of the Trustees as such, and such payment will be secured by a lien upon the property and assets held under the Trust Agreement.

C. Basis of Issuance of Participating Shares.

1. Participating Certificates representing Participating Shares in the Trust covering the shares of the Reorganized Company are to be distributed to the holders of the securities, claims and interests referred to in this Section C, on the following basis, but expressly subject to the provisions of Paragraph 2 following:

(a) Holders of Unsubordinated First Mortgage 6% Real Estate Gold Bonds will be entitled to receive one Participating Share for each \$100 principal amount of said bonds for the principal thereof.

(b) The holders of Subordinated First Mortgage 6% Real Estate Gold Bonds will be entitled to receive one Participating Share for each \$200 principal amount of said bonds for the principal thereof.

(c) The holders of judgments against the Debtor, based on First Mortgage 6% Real Estate Gold Bonds, will be entitled to receive one Participating Share for each \$100 in principal amount of First Mortgage 6% Real Estate Gold Bonds in respect of which judgment was taken and in lieu of participation on account of said bonds.

(d) The holders of Second Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928, from the Granada Hotel Corporation to Chicago Trust Company, as Trustee, will be entitled to receive 357 Participating Shares for the principal thereof, on the basis of one Participating Share for each \$1,000 principal amount of said bonds for the principal thereof.

(e) The holders of unsecured claims against the Debtor will be entitled to receive one Participating Share for each \$5,000 aggregate amount of such claim, provided that not more than 8 Participating Shares shall be issued with respect to said unsecured claims.

(f) The holders of shares of Preferred Stock of Debtor will be entitled to receive one Participating Share for each 25 shares of said Preferred Stock, providing that no more than 40 Participating Shares shall be issued in respect of said shares of Preferred Stock.

(g) The holders of shares of Common Stock of Debtor will be entitled to receive 1 Participating Share for each 100 shares of Common Stock, provided that not more



than 10 Participating Shares shall be issued in respect of said Common Stock of Debtor.

2. No Participating Share or Shares shall be issued:

(a) To any holder of First Mortgage 6% Real Estate Gold Bonds, unless and until there shall have been surrendered for cancellation to such agency as the Court may approve, the bond or bonds, in respect of which Participating Share or Shares is or are to be issued, together with all appurtenant interest coupons payable March 1, 1932 and thereafter. Cancellation thereof shall satisfy such bond or bonds and all interest due thereon, whether evidenced by coupons or otherwise.

(b) To any holder of judgment based on First Mortgage 6% Real Estate Gold Bonds, unless and until there shall have been delivered to such agency as the Court may approve, a discharge and satisfaction of said judgment, in respect of which Participating Share or Shares is or are to be issued.

(c) To any holder of Second Mortgage 6% Real Estate Gold Bonds, unless and until there shall have been surrendered for cancellation to such agency as the Court may approve, the bond or bonds in respect of which Participating Share or Shares is or are to be issued, together with all appurtenant interest coupons. Cancellation thereof shall satisfy such bond or bonds and all interest due thereon, whether evidenced by coupons or otherwise.

(d) To any holder of unsecured claims, unless and until there shall have been delivered to such agency as the Court may approve, an instrument of release of such claims in respect of which Participating Share or Shares is or are to be issued accompanied by any written instrument upon which such claims may be based.

(e) To any holder of shares of Preferred Stock (unless and until there shall have been surrendered for cancellation to such agency as the Court may approve the Certificate or Certificates evidencing such shares in respect of which Participating Share or Shares is or are to be issued.

(f) To any holder of shares of Common Stock, unless and until there shall have been surrendered for cancellation to such agency as the Court may approve the Certificate or Certificates evidencing such shares in respect of which Participating Share or Shares is or are to be issued.

3. In case any holder is unable to surrender for cancellation securities in respect of which Participating

Share or Shares is or are to be issued as aforesaid, said Participating Shares may be issued to such holders otherwise entitled thereto upon and complying with such terms and conditions in connection therewith as the Court may determine.

4. Participating Shares which are issuable in respect of First Mortgage 6% Real Estate Gold Bonds held by the Protective Committee shall be delivered to the Protective Committee, and shall, in accordance with and subject to the provisions of said Deposit Agreement dated April 25, 1933 be transferred and/or distributed by the Protective Committee as soon as practicable to and among the holders of Certificates of Deposit.

D. Treatment of Any and All Other Claims except as Provided for in Section C.

1. All claims entitled to priority over existing mortgages, except taxes which are a lien upon the property and assets of the Debtor, shall be paid in cash in full, or, with the consent of the party entitled to such payment, shall be assumed by the Reorganized Company, in which event they shall be paid in full before a declaration setting aside the payment of any dividends upon the Capital Stock of the Reorganized Company.

2. All taxes which constitute a lien upon the property and assets of Debtor, and which are prior to existing mortgages of Debtor, shall be assumed and paid by the Reorganized Company, either by means of the new financing contemplated by Section F hereof, or in regular course, subject to the same right of contest thereof as the Debtor would have had if the reorganization provided for herein had not been consummated.

3. All claims for interest accruing subsequent to September, 1, 1931, upon or in reference to First Mortgage 6% Real Estate Gold Bonds, and all claims for interest upon or in reference to Second Mortgage 6% Real Estate Gold Bonds, shall be disregarded and the holders thereof shall be entitled to receive neither cash, Participating Shares nor any other securities or things of value whatsoever in respect thereof. It is contemplated that all such claims for interest are held by those who will become entitled to Participation Certificates under and subject to the provisions of Section C hereof. If and to the extent that holders of such interest claims are not holders of securities in respect of the principal of which Participating Shares are to be issued under Section C hereof, protection for the realization by such holders of

the value of such claims, when proved and allowed, may be provided by an appraisal thereof made under the direction of the Court, and the value so found shall be paid in cash to the persons entitled thereto.

4. The claim, as allowed by the Court, of City National Bank and Trust Company of Chicago, as Successor Trustee under Trust Deed securing First Mortgage 6% Real Estate Gold Bonds, for amounts due and owing to it for its own use and benefit, as established by the decree of foreclosure entered December 18, 1936, in proceedings pending in the Superior Court of Cook County, Illinois, in cause numbered 519151, shall be paid in the same manner and upon the same terms and conditions as costs of administration in these proceedings are paid, pursuant to the terms and provisions of Section E hereof.

5. Payment of the said Receiver's Certificate now outstanding issued in said foreclosure proceedings shall be assumed and paid in cash by the Reorganized Company.

6. The said Conditional Sales Contract covering the furniture located in the premises of Debtor shall be assumed by the Reorganized Company and payments shall be made thereon by the Reorganized Company in accordance with the terms and provisions thereof, and upon the payment of said balance by the Reorganized Company, title to such furniture shall be assigned and transferred to the Reorganized Company.

7. Executory contracts to which the Debtor is a party, including any unexpired leases in which the Debtor is lessor, shall not be affected by the Plan except to the extent that they may be modified or rejected with the approval of the Court.

#### **E. Costs, Expenses and Allowances.**

All costs of administration and other allowances made or approved by the Court in the reorganization proceedings are to be paid in cash in full, or, with the consent of the party entitled to such payment, shall be assumed and paid by the Reorganized Company in cash, or by its evidences of indebtedness, as the Court may direct. Without limiting the generality of the foregoing, such costs and allowances shall include reasonable compensation for any and all services rendered and reimbursement for the actual and necessary expenses incurred by parties entitled thereto in connection with the Plan, or in connection with the reorganization proceedings, in conformity with Section 77B of the Bankruptcy Act, as

amended. All such costs and allowances so made and approved and so assumed by the Reorganized Company with the consent of any such party entitled thereto shall be paid in full before any dividend is declared, paid or set apart upon any shares of the Reorganized Company.

The Committee in its work has used certain of the facilities and personnel of Central Republic Trust Company and City National Bank and Trust Company of Chicago, for which it is anticipated that compensation will be requested. Those members of the Committee who are officers or employees of the City National Bank and Trust Company of Chicago and who were officers or employees of Central Republic Trust Company or its predecessors, receive and have received compensation for their services as such officers and employees. Such compensation is an element of the cost of the services furnished by Central Republic Trust Company and City National Bank and Trust Company of Chicago in connection with this Plan.

99. F. New Financing.

To provide funds or securities for the payment of the costs of administration and other allowances made or approved by the Court and of claims which are to be paid in cash in full (including taxes), and to provide funds for working capital required by the operation of the Reorganized Company, the Reorganized company may, subject to the approval of the Court, issue evidences of indebtedness and borrow such sums as may be necessary in the premises, and as security for payment thereof, may mortgage, pledge or otherwise encumber or hypothecate all or any part of its property and assets.

G. Means for Execution of the Plan.

1. A new corporation will be organized with power to acquire and hold the property and assets of the Debtor and to carry on the business heretofore conducted by the Debtor, said corporation to be the "Reorganized Company" mentioned in the Plan. The new corporation shall have a Board of Directors consisting of five (5) members and the initial Board of Directors to be elected shall be the persons selected as Trustees under the Trust Agreement. To such new corporation shall be conveyed, transferred and assigned all of the property and assets of the Debtor, free and clear, however, of all claims of stockholders and creditors of Debtor, except as other-



wise provided in the Plan. The capital stock of the new corporation shall consist of such number of shares of stock, all of the same class and without par value, as may be necessary or appropriate for the purpose of consummating the Plan.

2. All liability and indebtedness evidenced by First Mortgage 6% Real Estate Gold Bonds, Second Mortgage 6% Real Estate Gold Bonds and any and all interest pertaining thereto, shall be cancelled and extinguished and the respective Trust Deeds securing the First Mortgage 6% Real Estate Gold Bonds and the Second Mortgage 6% Real Estate Gold Bonds shall be released of record by the respective Successor Trustees thereunder, and any and all cash and securities held by said Successor Trustees, or any of them, for the use and benefit of the holders of the securities issued and secured by said respective Trust Deeds, shall be turned over to the Reorganized Company. In the event that said Successor Trustees under said Trust Deeds, or any of them, fail, neglect or refuse to execute and deliver such instruments as may be necessary or appropriate to evidence such release, then a Special Master shall be appointed by the Court for such purpose.

3. All liability and indebtedness evidenced by chattel mortgage note, including interest pertaining thereto, shall be cancelled and extinguished and the chattel mortgage securing the said chattel mortgage note shall be released of record by the Successor Trustee thereunder. In the event that said Successor Trustee under said chattel mortgage shall fail, neglect or refuse to execute and deliver such instrument as may be necessary or appropriate to evidence such release, then a Special Master shall be appointed by the Court for such purpose.

4. The Successor Trustee under the Trust Deed securing the First Mortgage 6% Real Estate Gold Bonds shall execute and deliver an instrument of satisfaction of the decree of foreclosure entered on December 18, 1936, in proceedings pending in the Superior Court of Cook County, Illinois, in case numbered 519151, and in the event that such Successor Trustee shall fail, neglect or refuse to execute and deliver such instrument of satisfaction as may be necessary or appropriate to satisfy said decree of foreclosure, then a Special Master shall be appointed by the Court for such purpose.

5. The shares of stock of the Reorganized Company shall be issued to the Trustees under the Trust Agree-

ment, and the Trustees under said Trust Agreement shall forthwith cause to be issued Participating Shares in accordance with the provisions of Section C hereof.

6. The new financing contemplated by the Plan will be accomplished in accordance with the provisions of Section F hereof, and funds will be made available to the extent necessary to consummate the Plan.

7. In general, all things for the execution and consummation of the Plan are to be undertaken and accomplished as the Court may determine to be feasible and appropriate. Anything herein to the contrary notwithstanding, the Court may authorize the taking of any action and the use of any methods and procedure and the entering into such arrangements and agreements which the Court may determine to be necessary or advisable to accomplish the results contemplated by the Plan, and which are consistent therewith.

8. The Protective Committee and its counsel shall, under the direction of the Court, supervise and assist generally in the execution and consummation of the Plan, and in that behalf are expressly authorized and empowered to act upon any construction of the Plan approved by the Court and, subject to the approval of the Court, may correct any defects or supply any omissions or recognize any inconsistencies in the Plan.

**H. Confirmation of Plan.**

1. The Plan will not become effective unless and until it has been accepted in writing, and such acceptance shall have been filed in the above entitled proceedings by or on behalf of holders of at least two-thirds in aggregate principal amount of said unsubordinated First Mortgage 5% Real Estate Gold Bonds.

The Protective Committee shall have the right and power to consent to and accept this Plan in respect of First Mortgage 6% Real Estate Gold Bonds on deposit with it, excepting only in respect of such bonds covered by Certificates of Deposit the holders of which shall dissent to this Plan in the manner provided in and by the said Deposit Agreement dated April 25, 1933, relating to said bonds. With its acceptance of the Plan in writing, the Committee shall file a statement of the principal amount of said bonds deposited with it covered by Certificates of Deposit the holders of which shall not have dissented from this Plan, as provided by said Deposit Agreement, and such acceptance in writing shall be an affirmative acceptance by and be binding upon the hold-

ers of Certificates of Deposit covering said bonds so deposited who shall not have so dissented.

2. No persons consenting to or accepting the Plan shall be bound by such consent or acceptance unless a valid order confirming the Plan shall be entered, and any person, firm or corporation advancing funds to the Reorganized Company for the purpose of consummating the Plan shall have a first and prior lien on all funds and property and assets of the Reorganized Company as security for the repayment of such funds, upon any reversal, setting aside, vacating or holding void or invalid of the order or decree confirming the Plan.

I. Modification of Plan.

Changes and modifications of the Plan may be made in the manner provided in Section 77B of the Bankruptcy Act, as amended. Anything contained in the said 101 Deposit Agreement dated April 25, 1933, under which the Protective Committee is acting, to the contrary notwithstanding, any change or modification in the Plan which is made with the approval of the Court shall be binding upon depositors under said Deposit Agreement who have not dissented from the Plan on its original submission to such depositors by the Protective Committee, and the Plan as so changed or modified need not be resubmitted to such depositors unless the Court shall determine that such change or modification is materially adverse to the interests of such depositors.

Dated, May 21, 1937.

102 And on, to wit, the 14th day of September, 1937, came the City Natl. Bank & Tr. Co. of Chicago by its attorneys and filed in the Clerk's office of said Court its certain Proof of Claim (filed in Referee's office, June 23, 1937), in words and figures following, to wit:

103. IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—65811) • •

Filed  
Sept. 14,  
1937.

PROOF OF CLAIM.

State of Illinois, }  
County of Cook. } ss.

At Chicago, in the Northern District of Illinois, in the Eastern Division thereof, on the 23rd day of June, 1937 came G. R. Helffrich and made oath and says:

1. That he resides at Park Ridge, in the County of Cook and State of Illinois; that he is over 21 years of age, and is Trust Officer of City National Bank and Trust Company of Chicago (hereinafter for convenience called "Claimant"), a banking corporation having its principal office and place of business in the City of Chicago, Illinois, and as such is duly authorized to make this proof of claim.

2. That this claim is made by claimant as Successor Trustee under the certain Trust Indenture from Granada Hotel Corporation, a corporation, the Debtor in the above entitled proceedings, to Chicago Trust Company, as Trustee, dated September 1, 1928, and recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on 104 October 1, 1928, as Document No. 10161996, on behalf of itself as such Successor Trustee and of the holders of Bonds and Interest Coupons appertaining thereto issued and outstanding under such Trust Indenture.

3. That by a Supplemental Indenture dated September 1, 1928 between Granada Hotel Corporation, a corporation, the Debtor in the above entitled proceedings, and Chicago Trust Company, as Trustee, Bonds numbered M-141 to M-165, both inclusive, aggregating \$25,000.00 in principal amount, together with interest coupons appertaining thereto, were subordinated to the lien of the remaining Bonds and Interest Coupons appertaining thereto secured by the said Trust Indenture.

4. The Debtor herein is truly and justly indebted to Claimant, as Successor Trustee, in the sum of Four Hundred Eighty-five Thousand Five Hundred Dollars (\$485,500.00) in respect of unsubordinated unpaid Bonds in addition to Interest Coupons issued and outstanding under said Trust Indenture, together with interest thereon,



and is justly and truly indebted to Claimant, as Successor Trustee, in the sum of Twenty-five Thousand Dollars (\$25,000.00) in respect of subordinated Bonds in addition to Interest Coupons issued and outstanding under said Trust Indenture, together with interest thereon.

5. That, in addition to the claim of Claimant, as Successor Trustee, for the use and benefit of the holders of said Bonds and Interest Coupons appertaining thereto issued and outstanding under said Trust Indenture, said Debtor is further indebted to Claimant, as Successor Trustee, for the use and benefit of Claimant, in the sum of Ten Thousand Eight Hundred Forty-nine Dollars and Ninety Cents (\$10,849.90); that said indebtedness was

105 established by Decree entered December 18, 1936 in the Superior Court of Cook County, Illinois, in proceedings pending therein for the foreclosure of the lien of said Trust Indenture entitled "William A. Thuma, complainant, *vs.* Granada Hotel Corporation, a corporation, et al., defendants, and City National Bank and Trust Company of Chicago, a corporation, as Successor Trustee under Trust Deed recorded as Document No. 10161996, cross-complainant, *vs.* Granada Hotel Corporation, a corporation, and Granada Apartments, Inc., a corporation, et al., cross-defendants, No. 519151"; that the various items composing said indebtedness as so set forth in said Decree are as follows:

Fees of cross-complainant for services as Successor Trustee .....\$2560.00

Cross-complainant's solicitors' fees ..... 8250.00

(being the total amount as allowed in said Decree, less the value of the services not rendered at the date of the entry of the Decree as so found by said Decree.)

Court Reporter's and Stenographer's fees..... 39.90;

that in accordance with the terms of said Trust Indenture and pursuant to the terms of said Decree, said indebtedness in the sum of \$10,849.90 is an additional lien upon the property secured by said Trust Indenture and is prior and superior to the lien of said unpaid Bonds and Interest Coupons appertaining thereto, together with interest thereon.

6. That the consideration for said indebtedness is money loaned and advanced, services rendered, and costs and expenses incurred, as hereinbefore set forth.

7. That no part of said indebtedness has been paid.  
106 8. That there are no set-offs or counterclaims  
against said indebtedness.

9. That neither said Claimant, nor any person by order of said Claimant, or to the knowledge or belief of said Claimant, for the use of said Claimant, has had or received any manner of security for said indebtedness whatever, other than the security afforded by said Trust Indenture under which said bonds were issued and other than a certain Promissory Note dated August 23, 1933 in the amount of \$75,000.00 made by Debtor and secured by Chattel Mortgage dated August 23, 1933, and filed for record in the office of the Recorder of Deeds of Cook County, Illinois, on August 24, 1933 as Document No. B-702627.

10. That no preference or priority in payment is claimed for the said indebtedness, except as provided in said Trust Indenture and said decree.

11. That Claimant does not waive any of its rights to the security afforded by it by said Trust Indenture and said Chattel Mortgage and does not waive its liens upon the property mortgaged and pledged to Claimant thereunder, but expressly reserves said liens, and does not consent that said property be sold free and clear of the liens.

G. R. Helfrich.

Subscribed and sworn to before me this 23rd day of June, A. D. 1937.

J. B. Patterson,  
*Notary Public.*

(Seal)

My Commission expires: Dec. 2, 1939.

107 And on, to wit, the 14th day of September, 1937, came the Bondholders' Protective Committee by its attorneys and filed in the Clerk's office of said Court its certain Proof of Claim (filed June 23, 1937), in words and figures following, to wit;

Filed  
Sept. 14,  
1937.

108 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—65811) • •

PROOF OF CLAIM OF BONDHOLDERS'  
COMMITTEE.

State of Illinois, }  
County of Cook. } ss.

At Chicago, in the County of Cook and State of Illinois, on the 23rd day of June, 1937, came W. G. Sturm and made oath and says:

1. That he is a member of the Bondholders' Protective Committee (C. S. Tuttle, Albert J. Peterson, Lewis W. Riddle, W. G. Sturm and E. A. Kilmer, presently constituting the members thereof) which said Protective Committee (hereinafter called "claimant") was constituted and is acting under and by virtue of the certain Deposit Agreement dated April 25, 1933, relating to the First Mortgage Six Per Cent Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, a copy of which Deposit Agreement is attached hereto as Exhibit "A", and by reference is incorporated herein and made a part hereof.

2. That he is duly authorized and empowered to execute and file this proof of claim on behalf of claimant.

3. That claimant is the owner and holder of \$331,109.600 principal amount of said First Mortgage Six Per Cent Real Estate Gold Bonds together with certain interest coupons appertaining thereto; and that said Bonds are just and lawful obligations of Granada Apartments, Inc., a corporation, Debtor herein, and are secured by a first and prior lien on the property of Debtor.

4. That the said First Mortgage Six Per Cent Real estate Gold Bonds are on deposit with City National Bank and Trust Company of Chicago under the terms of said Deposit Agreement, the amount and number of Bonds being set forth in the Certificate of said Depository attached hereto as Exhibit "B" and by reference thereto is incorporated herein and made a part hereof.

5. That Granada Apartments, Inc., a corporation, Debtor herein, was at and before the filing of the peti-

tions in these proceedings, and still is, justly and truly indebted to claimant, in the sum of \$331,600, with interest thereon, from September 1, 1931, in respect of the said First Mortgage Six Per Cent Real Estate Gold Bonds so deposited.

6. That the consideration of said indebtedness is money loaned and advanced; that no part of said indebtedness has been paid; that there are no set-offs or counterclaims to said indebtedness; that no judgment has been rendered for said indebtedness; that no security has been received by said claimant on account of said indebtedness other than the security afforded by the Trust Deed under which said Bonds and Interest Coupons were issued.

7. That claimant does not waive any of its rights to the security afforded by said Trust Deed and does not waive its lien upon the property mortgaged or 110 pledged thereunder and does not consent that said property be sold free and clear of the lien of said Trust Deed.

8. That no preference or priority in payment is claimed for said debt except the preference and priority which is provided by the terms of said Trust Deed under which said Bonds and Interest Coupons have been issued and are outstanding.

W. G. Sturm.

W. G. Sturm.

Subscribed and sworn to before me this 23rd day of June, A. D. 1937.

(Seal)

Berthel W. Peterson,  
*Notary Public.*

My commission expires: 9/14/39.

111 And on, to wit, the 8th day of July, 1937, there was filed in the Clerk's office of said Court certain objections of Weightstill Woods, Trustee; which had been transmitted in words and figures following, to wit:



Filed  
July 8,  
1937.

112 IN THE DISTRICT COURT OF THE UNITED STATES.  
\* \* (Caption—65811) \* \*

**OBJECTIONS BY COURT TRUSTEE TO CLAIMS  
FILED BEFORE THE SPECIAL MASTER CARL  
R. CHINDBLOOM.**

The Trustee appointed by the Court in this cause, now presents his objections to the claims before the Master:

First: Trustee respectfully shows that claims numbered 4, 5, 6, 8, 9, 10, and 11, are each informal, lacking the original documents on which claim purports to be made, and are not allowable under terms of order May 24th, 1937.

Second: Trustee respectfully further shows that claims made by paragraphs 9 and 12 of claim 4; also the whole of claim 5; also the whole of claim 6; also the whole of claim 8; also paragraphs 5 and 9 of claim 9; also the whole of claims 10 and 11; are each and all unfounded, lacking in merit, invalid, and should be disallowed entirely in relation to this proceeding in this Court.

Wherefore your Trustee asks that said claims be disallowed.

Weightstill Woods,  
*Trustee.*

113 And on, to wit, the 8th day of July, 1937, came Carl R. Chindblom, Referee in Bankruptcy, and filed in the Clerk's office of said Court his certain Report in words and figures following, to wit:

114 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—65811) \* \*

Filed  
July 8,  
1937.

REPORT OF CARL R. CHINDBLOM, REFEREE IN  
BANKRUPTCY, AS, SPECIAL MASTER, UPON  
FILING OF CLAIMS AND OBJECTIONS THERE-  
TO, AND ACCEPTANCES OF PLAN OF REORGAN-  
IZATION.

To the Honorable John P. Barnes, Judge of the District  
Court of the United States, for the Northern District of  
Illinois, Eastern Division, in Bankruptcy Sitting:  
Honorable Sir:

In the above matter, your Honor on May 24, 1937 entered an order providing, inter alia, that for the purpose of a Plan of Reorganization and its acceptance the creditors and stockholders of the Debtor should be divided into certain classes stated in said order and in the Schedule hereinafter mentioned; that claims and interests against the Debtor or its property should be evidenced by filing with me on or before June 23, 1937 verified proofs of claims substantially in the form prescribed by Section 57a of the Bankruptcy Act, as amended, having attached thereto the original instruments, where such claims or interests are evidenced thereby, except as otherwise provided in said order; that all claims and interests, so filed as aforesaid, should be allowed by this Court in due course, without  
115 taking further proofs thereof, unless the Court shall otherwise determine or unless on or before July 3, 1937, or within such further time as the Court may allow, written objection to the allowance of any such claim or interest shall have been filed with the undersigned Special Master, in which event claims or interests to which objection shall have been filed shall be proved in accordance with law, provided, that, prior to the filing of such objection, a copy thereof shall be served upon counsel for the Bondholders' Committee; that the undersigned Special Master shall report to the Court as soon as may be after the date fixed for filing objection to claims the names of all persons filing claims and interests, the class in which each such claim or interest belongs and the amount of such claim or interest, noting any objection or objections which may have been filed to the allowance of any such claim or interest; and that creditors and stockholders whose claims

have been allowed may, at any time up to the time of confirmation of the Plan of Reorganization, accept said Plan by filing or causing to be filed written acceptances thereof with the undersigned as Special Master.

Pursuant to the aforesaid order, I hereby Report that proofs of claims and interests have been filed with me as shown in the Schedule hereto attached and made a part of this Report.

As shown in said Schedule, objections were filed to various claims by Weightstill Woods, Trustee herein. Said objections were of two general classes and were included in a single "blanket objection," as follows:

First: That claims numbered 4, 5, 6, 8, 9, 10 and 11 are "each informal, lacking the original documents on which claim purports to be made, and are not allowable under terms of order May 24th, 1937."

Second: That claims in paragraphs 9 and 12 of claim No. 4; the whole of claims Nos. 5, 6 and 8; paragraphs 5 and 9 of claim No. 9; and the whole of claims Nos. 10 and 11 "are each and all unfounded, lacking in merit, invalid, and should be disallowed entirely in relation to this proceeding in this Court."

Upon request of counsel for the Bondholders' Committee, I set a hearing on the aforesaid objections for July 7, 1937, at 11 A. M., at which time I was advised that your Honor had indicated a desire that I have a hearing and make report upon said objections. Although apparently no formal order to that effect has been entered, I conducted such hearing so far as possible with the situation existing as hereinafter shown.

As to the objections of the first class, the claimants agreed to present and did present in my office original documents necessary to sustain their claims in the matter of claims numbered 4, 5, 6, 8 and 10. Said objections to said claims should, therefor be overruled.

In the matter of claim No. 9, this claim was filed by the City National Bank & Trust Company of Chicago, as Successor Trustee to Chicago Trust Company as Trustee under a certain trust deed, and under the aforesaid order of your Honor did not require the presentation of instruments upon which the claim is based. The first objection to said claim should therefore be overruled.

In the matter of claim No. 11, which is a claim for personal property taxes, filed by the State's Attorney of Cook County, Illinois, I held that said claim was not based upon an instrument in writing and therefore

recommend to be overruled said objections of class 1 to said claim.

Objections of the second class, mentioned above, go to the merits of the claims above listed.

With reference to the 9th paragraph of claim No. 4, the note upon which said claim is based was filed subsequent to said hearing. No proof was offered upon the merits of said claim, but the Special Master was advised that your Honor will decide upon the ownership of the securities involved.

With reference to the 12th paragraph of claim No. 4, the certificates of stock were subsequently presented with said claim, but no further proof was presented. A separate claim, bearing No. 5, was filed as to the same stock. The Special Master was advised that your Honor will determine as to the ownership of the stock involved in claim No. 5.

With reference to claim No. 6, owned by the Reconstruction Finance Corporation, the objections in question were presented before me, but no proof was offered on the merits.

With reference to claim No. 8, no proof was offered on the merits.

With reference to paragraph 5 of claim No. 9, no proof was offered on the merits.

With reference to paragraph 9 of claim No. 9, I find that said paragraph is not in effect a claim but is merely a recital of the security claimed to be held for said claim, 118 consisting both of a real estate trust deed and a chattel mortgage.

With reference to claim No. 10, the same appears to be a duplicate of claim No. 4, which, as above shown, your Honor is to pass upon.

With reference to claim No. 11, as above shown, said claim is a tax claim for personal property taxes under the laws of Illinois. No proof was presented upon the merits as to said claim.

With reference to claim No. 12; the Trustee stated that it was his purpose to file objections to said claim by reason of the lack of presentation of instruments, but the bonds upon which said claim is based were subsequently presented before me and therefore no such objections will lie. No proof was made upon the merits of said claim.

After the aforesaid hearing a claim was filed with me and numbered "14," upon leave granted by your Honor,



by Edwin Rosenberg, alleged to be upon a judgment in a case entitled "Edwin Rosenberg vs. Granada Apartments, Inc.," in the sum of \$4,630.00, in the Municipal Court of Chicago, obtained on March 8, 1937. No opportunity was given for filing of objections to said claim.

As above shown, there was no hearing upon the merits of any of the claims to which objections were filed. Where documents were presented and no objections made to the documents themselves, I am of the opinion that a prima facie proof of the claim was made. I am also of the opinion that the aforesaid second objection is too vague and general and should specify or particularize the exceptions.

Counsel for the Trustee suggested that the claims not reserved for hearing by your Honor be allowed without prejudice to the filing of particular objections hereafter, especially in the case of liquidation instead of conclusion of the proceeding under Section 77B. This course was especially urged with reference to tax claims, as these claims doubtless include interest, penalties and costs, in addition to assessments based upon estimates. I recommend that such a course be followed:

As above shown, I have not found any formal order directing me to hear and determine objections to claims, but counsel agreed that your Honor had stated on the 2d instant that you desired objections to be heard by me. My office was advised of this situation late on Friday, the 2d instant, when the hearing on objections was set for the 7th instant because of the intervention of Saturday, Sunday and Monday, the 3rd, 4th and 5th of July, and the necessity for time to give notice to claimants of such hearing.

*Compensation of Special Master.*

I hereby certify that, in my opinion, a reasonable and customary fee for my services in the hearing and consideration of this matter and the preparation of this Report is the sum of \$60.00. I further certify that, in my opinion, a reasonable and proportionate charge for the use of my office and for clerical and stenographic services is the sum of \$25.00. I therefore respectfully request that a total compensation of \$85.00 be allowed me in this matter, of which \$60.00 are for services and \$25.00 for expenses.

**Mailing of Copies of This Report.**

Copies of this Report have been mailed to the following:  
Messrs. Mort D. & Frank Goldberg, 11 South LaSalle St., Chicago, Illinois, Attorneys for Debtor.

Messrs. Defreès, Buckingham, Jones & Hoffman, 105 South LaSalle St., Chicago, Illinois, Attorneys for Bondholders' Committee and for Trustee.

Messrs. Mayer, Meyer, Austrian & Platt, 231 South LaSalle St., Chicago, Illinois, Attorneys for Continental Illinois National Bank and Trust Company.

Vernon R. Loucks, Esq., 10 South LaSalle St., Chicago, Ill., Attorney for certain creditor.

Respectfully submitted,

Carl R. Chindblom,

*Referee in Bankruptcy, as Special Master.*

Dated, Chicago, Illinois, July 8, 1937.

**Documents Transmitted:**

1. The aforesaid claim No. 4.
2. The aforesaid claim No. 5.
3. The aforesaid "blanket objection" to certain claims.
4. Debtor's objections to Plan of Reorganization.

121 IN THE DISTRICT COURT OF THE UNITED STATES.  
• • (Caption—65811) • •

**SCHEDULE OF CLAIMS AND INTERESTS OF CREDITORS AND STOCKHOLDERS OF THE DEBTOR CORPORATION FILED WITH CARL R. CHINDBLOM, REFEREE IN BANKRUPTCY, AS SPECIAL MASTER, TOGETHER WITH CONSENTS AND OBJECTION TO THE PLAN OF REORGANIZATION AND OBJECTIONS TO CERTAIN CLAIMS.**

**Class 1.**

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, entitled to priority under Section 77B of the Bankruptcy Act, as amended.

Claim No. 11—Filed by the County Collector of Cook County, Illinois, for personal property taxes for the years

*Schedule of Claims and Interests.*

1931 to 1935 in the amount of \$2,727.95. Also a contingent claim for 1936 and 1937 in the amount of \$2,048.08.

(An objection was filed to this claim by Weightstill Woods, Trustee, on July 2, 1937.)

**Class 2.**

Claim of City National Bank and Trust Company of Chicago, as allowed in these proceedings, as Successor Trustee under the Trust Deed securing First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928, from Granada Hotel Corporation, a corporation, to Chicago Trust Company, as Trustee, for amounts due it for its own use and benefit, as established by decree of foreclosure of said Trust Deed entered December 18, 1936, in proceedings pending in the Superior Court of Cook County, Illinois in Cause Numbered 519151.

Claim No. 9—Filed by City National Bank and Trust  
122 Company of Chicago, as Successor Trustee, for fees and expenses incurred in foreclosure suit as follows:

Trustee's fees	\$2,560.00
Trustee's attorneys' fees	8,250.00
Stenographer's and court reporter's fees	39.90

**Total**

**\$10,849.90**

**Class 3.**

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to First Mortgage 6% Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, except with respect to said First Mortgage 6% Real Estate Gold Bonds comprised in Class 4 hereof.

# Schedule of Claims and Interests.

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Claim No.	Name of Claimant	Amount of Claim	Acceptance of Plan	Objection to Claim
1	Maurice M. Kraft..... (Based on Bond No. D 48)	\$ 500.00 prin. 40.00 int.	No	No
3	G. R. Curnock..... (Based on Bonds Nos. D265, 273, 391, 475, 476, 484, 487, 547.)	4,000.00	No	No
4	Stephen L. Ingersoll, As agent for Cordelia L. Ingersoll, as Execu- trix of Estate of Stephen A. Inger- soll, Deceased	28,400.00 undeclared bonds 12,000.00 deposited bonds	Yes	Objection filed by Weightstill Woods, Trus- tee on July 2, 1937.
	Undeposited bonds Nos. C 41/43, 176/7, 236, 262, 269, 278, D 4, 204, 283, 284, 362, 363, 439.			
	Deposited bonds Nos. not shown, following are the Certificate of Deposit numbers: 252, 332, 373, 374, 375, 386, 406, 407, 408, 410, 409, 412, 417, 423.			
6	Reconstruction Finance Corporation.	4,900.00	Yes	Objection filed by Weightstill Woods, Trus- tee July 2, 1937
	Bonds Nos. M13, 14, 15, D63, 65, 239, C10, 13, 72, 139. Attached to claim.			



*Schedule of Claims and Interests.*

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Claim No.	Name of Claimant	Amount of Claim	Acceptance of Plan	Objection to Claim
7	C. S. Tuttle, Albert J. Peterson, Lewis W. Riddle, W. G. Sturm and E. A. Kilmer, as Bondholders' Committee.	\$331,600.00 (Bond Nos. not shown)	No	No
12	Harris Trust & Savings Bank... (Bonds Nos. C156/58, 201, 208, 234, 285, 392, 394, 437, 485/86, 488, 539/42, 563, 601, 606.)	8,000.00	No	No
9	City National Bank & Trust Company, as Successor Trustee.	485,500.00	No	No except as to Paragraphs 5 and 9 by Weightstill Woods, Trustee on July 2, 1937.

(This claim should be reduced pro tanto by total amount of claims based on undeposited bonds in the amount of \$45,800.00 and by the Committee's claim in the amount of \$331,600.00, totaling \$377,400.00, making net amount of this claim, \$108,100.00.)

## Class 4

Holders of claims allowed in these proceedings against Granada Apartments, Inc. or its property, with respect to First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, with respect to Bonds numbered M-141 to M-165, both inclusive.

Claim No.	Name of Claimant	Amount of Claim	Acceptance of Plan	Objection to Claim
4	Stephen L. Ingersoll, As agent for Cordelia L. Ingersoll, as Executrix of Estate of Stephen A. Ingersoll, Deceased.	\$24,000.00	Yes	Yes filed by Weightstill Woods, Trustee on July 2, 1937.
	(Bonds Nos. 142 to 165, inclusive).			
9	City National Bank & Trust Company, as Trustee.	25,000.00	No	No
	(Bonds Nos. 141 to 165; reduced pro tanto by amount of Claim No. 4 making net amount of this claim \$1,000.00).			

*Schedule of Claims and Interests.*

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Class 5

Holders of claims allowed in these proceedings against Granada Apartments, Inc. or its property, with respect to Second Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee.

Claim No.	Name of Claimant	Amount of Claim	Acceptance of Plan	Objection to Claim
3	G. R. Curnock..... (Bonds Nos. 171 to 194, 117 to 120, 130 to 136, 227 to 241).	\$50,000.00	No	No
4	Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Ex- ecutrix of Estate of Stephen A. Ingersoll, Deceased.  (Bonds Nos. D4, 5, 8 to 20, M101 to 116, 123 to 127, 128, 129, 242, 243, 244 to 266, 305 to 340, 343 to 350.)	99,500.00	Yes	Objection filed by Weightstill Woods, Trust- tee on July 2, 1937.
6	Reconstruction Finance Corporation.  (Bonds Nos. M122, 267 to 304, M167, 168, 169, 170, attached to claim).	43,000.00	Yes	Objection filed by Weightstill Woods, Trust- tee on July 2, 1937.
12	Harris Trust & Savings Bank... (Bonds Nos. 51 to 100).	50,000.00	No	No
13	Continental Illinois National Bank of Chicago. (Bonds Nos. 1 to 50).	50,000.00 prin. 4,500.00 int.	No	No

## Class 6

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to Promissory Chattel Mortgage Note secured by Chattel Mortgage Dated August 23, 1933.

Claim No. 9—Filed by City National Bank of Chicago, as Trustee, for Chattel Mortgage Note in the amount of \$75,000.00 August 23, 1933.

(On July 2, 1937, Weightstill Woods, Trustee, filed his objections to this part of the Trustee's claim.)

## Class 7

Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property with respect to the shares of Preferred Stock of Granada Apartments, Inc.

Claim No.	Name of Claimant	No. of Shares	Acceptance of Plan	Objection to Claim
2	Emil W. Christiansen and Edla Christiansen.	12 Cert. No. 7 attached	No	No
5	Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Executrix of Estate of Stephen A. Ingersoll, Deceased.	501	Yes	Objection filed by Weightstill Woods, Trustee on July 2, 1937.
	(Certificates Nos. 2, 3, 6, 9, 19, 22, 23, 25, 31, 33, 34, 35, 43, 47, 50, 51, 52, 53; 54, 59, 63, 64, 65, 67.)			
10	E. W. Wenstrand, as Trustee...	1000 Cert. No. 4	No	Objection filed by Weightstill Wood as Trustee, on July 2, 1937.

## Schedule of Claims and Interests.

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### Class 8

- Holders of claims allowed in these proceedings against Granada Apartments, Inc. or its property, with respect to the Common Stock of Granada Apartments, Inc.

Claim No.	Name of Claimant	No. of Shares	Acceptance of Plan	Objection to Claim
5	Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Executrix of Estate of Stephen A. Ingersoll, Deceased.	1,000. Cert. No. 4	Yes	Objection filed by Weightstill Woods, Trustee on July 2, 1937.
10	E. W. Wenstrand, Trustee.....	507	No	Objection filed by Weightstill Woods, Trustee on July 2, 1937.

### Class 9

- Holders of claims allowed in these proceedings against Granada Apartments, Inc. or its property, of whatever character other than as above in the foregoing Classes 1 to 8, inclusive, enumerated, whether the same be secured or unsecured or evidenced by written instrument.

Claim No.	Name of Claimant	Amount of Claim	Acceptance of Plan	Objection to Claim
4	Stephen L. Ingersoll, as Agent for Cordelia L. Ingersoll, as Executrix of Estate of Stephen A. Ingersoll, Deceased.	\$16,000.00	Yes	Filed by Weightstill Woods, as Trustee on July 2, 1937.
(Based on promissory note of the debtor corporation).				
8	The Indemnity Insurance Company of North America.	4,000.00	No	Objection filed by Weightstill Woods, Trustee on July 2, 1937.
(Based on Receiver's Certificate, copy of which is shown on claim):				
10	E. W. Wenstrand, as Trustee...	16,500.00	No	Objection filed by Weightstill Woods, Trustee on July 2, 1937.

(Based on corporation promissory note).



## Schedule of Claims and Interests.

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Claim No.	Name of Claimant	Amount of Claim	Acceptance of Plan	Objection to Claim
14	Edwin Rosenberg:	\$4,630.00	No	No
	(Based on judgment obtained in the Municipal Court of Chicago on March 8, 1937).			
	(An objection to the Plan of Reorganization was filed on June 23, 1937 by the Debtor corporation).			
	The following Acceptances of the Plan of Reorganization were filed, but no claims:			

## Class 3

First Mortgage Bonds  
(Unsubordinated)

Name	Bond Nos.	Amount
Adolph Gumrow	D79	\$ 500.00
Ruth M. Neilond	Not shown	200.00
A. M. High, by W. R. Johnson	D 228	500.00
Minnie Quinn, by W. R. Johnson	D 84, 85	1,000.00
Louise White	Not shown	500.00
A. M. High	Not shown	500.00
Total		\$3,200.00

## Class 5

## Second Mortgage Bonds

G. L. Daan, Agent	Not shown	7,000.00
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## Class 7

## Preferred Stock

Tillie Roessler Kotelman	25 shares
Helen Zielke and Bertha Ploiger	20 shares
Total	45 shares

CERTIFIED:

Carl R. Chindblons

REFEREE IN BANKRUPTCY AS SPECIAL MASTER

128 And afterwards, to wit, on the 14th day of July, A. D. 1937, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

Entered  
July 14,  
1937.

129 IN THE DISTRICT COURT OF THE UNITED STATES.  
\* \* (Caption—65811) \* \*

### ORDER.

This cause coming on to be heard on the allowance or disallowance of claims against Debtor and interest in its property heretofore filed herein, pursuant to Order entered herein on May 24, 1937, and upon objections to certain claims, which objections have been filed herein pursuant to the said Order, by the Trustee heretofore appointed in these proceedings and the Court being fully advised in the premises:

It Is Ordered that the objections of the said Trustee as set forth in the first paragraph thereof to claims numbered 4, 5, 6, 8, 9, 10 and 11 (said designation being the designation set forth in the report of the Special Master with respect to claims as filed pursuant to said Order entered on May 24, 1937) be, and hereby are, overruled without prejudice to the right of the said Trustee to renew said objections in the event an Order of Liquidation of the Debtor is entered in these proceedings; and

It Is Further Ordered that the objections of the said Trustee as set forth in the second paragraph thereof to claims numbered 4, 5, 6, paragraph 9 of claim 9, and claim 10 be, and hereby are overruled without prejudice to the right of the said Trustee to renew said objections in the event an Order of Liquidation of the Debtor is entered in these proceedings; and

130 It Is Further Ordered that the hearing with respect to claim numbered 8, paragraph 5 of claim numbered 9 and claim numbered 11 and the objections of the said Trustee thereto be, and hereby is, continued to September 14, 1937, without further notice for determination thereof; and

It Is Further Ordered that the hearing with respect to the ownership of securities set forth in claims 4, 5 and 10, and supplemental proof of claim heretofore filed herein by E. W. Wenstrand, as Trustee, be and hereby is, continued, without further notice, to July 15, 1937; and

It Is Further Ordered that the following claims in the respective classes and in the respective amounts designated be, and hereby are, allowed:

(a) The following claims as class 3 claims:

1. Maurice M. Kraft in the amount of \$ 500.00  
plus interest
2. G. R. Curnock in the amount of 4000.00  
plus interest
3. Stephen L. Ingersoll, as agent for Cordelia  
L. Ingersoll, as executrix of the estate of  
Stephen A. Ingersoll, deceased, or E. W.  
Wenstrand, as Trustee in the amount of 4400.00  
plus interest
4. Reconstruction Finance Corporation in the  
amount of 4900.00
5. Harris Trust and Savings Bank in the  
amount of 8000.00
6. C. S. Tuttle, Albert J. Peterson, Lewis W.  
Riddle, W. G. Sturm and E. A. Kinner,  
constituting the Bondholders Protective  
Committee, in the amount of 331,600.00
- 131 7. City National Bank and Trust Company  
of Chicago, as Successor Trustee  
under Trust Deed dated September 1, 1925  
securing First Mortgage 6% Real Estate  
Gold Bonds of Debtor, in the amount of \$127,600.00  
plus interest,  
computed as follows:

Total amount of claim \$485,500.00

Less claims allowed as hereinabove set forth  
in 1 to 7, inclusive, and claim hereinafter  
allowed as a class 9 claim of Edwin Rosen-  
berg, based on judgment of \$4500.00 prin-  
cipal amount of said Bonds \$357,900.00

(b) The following claims as class 4 claims:

1. Stephen L. Ingersoll, as agent for Cordelia  
L. Ingersoll as executrix of the estate of  
Stephen A. Ingersoll, deceased, or E. W.  
Wenstrand, as Trustee, in the amount of \$ 24,000.00  
plus interest.

2. City National Bank and Trust Company of Chicago as Successor Trustee under Trust Deed dated September 1, 1928, securing First Mortgage 6% Real Estate Gold Bonds of Debtor, in the amount of 1,000.00 plus interest,
- computed as follows:
- |                                   |                         |
|-----------------------------------|-------------------------|
| Total amount of claim             | 25,000.00               |
| Less claim allowed in 1 above     | 24,000.00               |
| Amount of Successor Trustee claim | 1,000.00 plus interest. |

(c) The following claims as class 5 claims:

1. G. R. Curnock, in the amount of \$50,000.00 plus interest.
2. Stephen L. Ingersoll, as agent for Cordelia L. Ingersoll as executrix of the estate of Stephen A. Ingersoll, deceased, or E. W. Wenstrand, as Trustee, in the amount of 99,500.00 plus interest.
3. Reconstruction Finance Corporation, in the amount of 43,000.00 plus interest.
- 132 4. Harris Trust and Savings Bank, in the amount of \$ 50,000.00 plus interest
5. Continental Illinois National Bank, in the amount of 50,000.00 plus interest

(d) The following claims as class 7 claims:

1. Stephen L. Ingersoll, as agent for Cordelia L. Ingersoll, as executrix of the estate of Stephen A. Ingersoll, deceased 4 shares
2. Stephen L. Ingersoll, as agent for Cordelia L. Ingersoll, as executrix of the estate of Stephen A. Ingersoll, deceased, or E. W. Wenstrand, as Trustee 497 shares
3. Emil W. Christiansen and Edla Christiansen 12 shares
4. E. W. Wenstrand 10 shares

(e) The following claim as a class 8 claim:

1. Stephen L. Ingersoll, as agent for Cordelia L. Ingersoll as executrix of the estate of Stephen A. Ingersoll, deceased, or E. W. Wenstrand, as Trustee 1000 shares



(f) The following claim as a class 9 claim:

1. Edwin Rosenberg, (based on judgment with respect to First Mortgage 6% Real Estate Gold Bonds) in the amount of \$ 4,630.00; and

It Is Further Ordered that the following claims in the respective classes and for the respective amounts designated be, and hereby are, disallowed as follows:

1. The claim of Stephen L. Ingersoll, as agent for Cordelia L. Ingersoll, as executrix of the estate of Stephen A. Ingersoll, deceased, with respect to class 3 claim evidenced by Certificates of Deposit in the principal amount of \$12,000.00, for the reason that said claim is a duplication of the class 3 claim filed herein by the Bondholders Protective Committee.

- 133 2. The claim of Stephen L. Ingersoll, as agent for Cordelia L. Ingersoll, as executrix of the estate of Stephen A. Ingersoll, deceased, with respect to class 9 claim evidenced by promissory note of the Debtor in the amount of \$16,000.00

3. The claim of E. W. Wenstrand, as Trustee, with respect to class 9 claim evidenced by promissory note of Debtor in the amount of \$16,500.00.

4. The claim of E. W. Wenstrand with respect to class 9 claim evidenced by promissory notes of Debtor in the amount of \$26,500.00; and

It Is Further Ordered that upon the date of the entry of the final decree herein, City National Bank and Trust Company of Chicago, as Successor Trustee under the Trust Deed dated September 1, 1928, securing First Mortgage 6% Real Estate Gold Bonds of Debtor, be, and hereby is, directed to turn over to the Reorganized Company for cancellation \$30,000.00 principal amount of Second Mortgage 6% Real Estate Gold Bonds of Debtor now held by it.

Enter:

Barnes,  
Judge.

(July 14, 1937)

134 And afterwards, to wit, on the 12th day of July, A. D. 1937, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

Entered  
July 12,  
1937.

135 IN THE DISTRICT COURT OF THE UNITED STATES.  
\* \* (Caption—65811) \* \*

**ORDER RE POSSESSION.**

This matter coming on before the Court,  
It is Ordered that further hearing on the matter of permanent possession be continued until September 15, 1937, and that Weightstill Woods continue as the Temporary Trustee under the bond heretofore given, until the further order of the Court.

Enter:

Barnes  
*District Judge.*

136 And on, to wit, the 12th day of July, 1937, came the Protective Committee by its attorneys and filed in the Clerk's office of said Court its certain Acceptance of Plan of Reorganization in words and figures following, to wit:

Filed  
July 12,  
1937.

137 IN THE DISTRICT COURT OF THE UNITED STATES.  
\* \* (Caption—65811) \* \*

**ACCEPTANCE OF PLAN OF REORGANIZATION.**

The undersigned, owners and holders of \$316,300 principal amount of First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928, from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, together with interest with respect thereto (said Bonds being deposited under the certain Deposit Agreement dated April 25, 1933, the depositors of which have, as in said Deposit Agreement provided, consented to the Plan of Reorgan-

*Order Confirming Plan.*

ization hereinafter mentioned), do hereby accept and approve the Plan of Reorganization of Debtor dated May 1, 1937, heretofore filed in the above entitled proceedings on May 24, 1937 by the undersigned.

Dated: July 12th, 1937.

C. S. Tuttle  
Albert J. Peterson  
Lewis W. Riddle  
W. G. Sturm  
E. A. Kilmer

*As members of the Protective Committee acting under the Deposit Agreement dated April 25, 1933.*

By: C. S. Tuttle  
*Hereunto duly authorized.*

Filed  
July 14,  
1937.

138 And afterwards, to wit, on the 14th day of July, A. D. 1937, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

139 IN THE DISTRICT COURT OF THE UNITED STATES.  
\* \* (Caption—65811) \* \*

### ORDER CONFIRMING PLAN OF REORGANIZATION.

This cause coming on to be heard pursuant to an Order entered herein on May 24, 1937, on Petition of Charles A. Tuttle, Albert J. Peterson, Lewis W. Riddle, W. G. Sturm and E. A. Kilmer, constituting the Protective Committee (hereinafter called the "Committee"), acting under the certain Deposit Agreement dated April 25, 1933 with respect to the First Mortgage 6% Real Estate Gold Bonds of Debtor for the purposes and matters set forth in said Order entered herein on May 24, 1937, and it appearing to the Court that the said hearing has been continued from time to time to this date without further Notice, and the Court having heard the statements of counsel and being fully advised in the premises:

The Court Finds and It Is Ordered, Adjudged and Decreed as follows:

1. Notice of this hearing has been duly given to all

creditors and stockholders of Debtor and claimants against its property and all other parties in interest in accordance with the provisions of the aforesaid Order entered on May 24, 1937.

140 2. The Court has jurisdiction in these proceedings of the Debtor and of its creditors and stockholders and the claimants against the property of Debtor and all parties in interest and of the property of the Debtor and of the subject matter in these proceedings.

3. That the Committee has proposed for consideration and confirmation at a hearing duly noticed therefor the Plan of Reorganization of Debtor filed herein by the Committee pursuant to said Order entered herein on May 24, 1937.

4. That the said Plan of Reorganization be and hereby is modified and amended as follows, the said Plan of Reorganization as so amended being hereinafter called "Plan of Reorganization":

1. By striking from the first paragraph of Section B the words and figures "five (5)", and by substituting in lieu thereof the words and figures "three (3)".

2. By striking from the first paragraph of Section B the sentence reading "Two of the initial Trustees under such Trust Agreement shall be designated by the Court and three of such initial Trustees shall be designated by the Committee, subject to the approval of the Court", and by substituting in lieu thereof the following: "The initial Trustees under such Trust Agreement shall be designated by the Court."

3. By adding the following to the third paragraph of Section B: "and directors as such shall receive no compensation".

4. By adding the following at the end of the fourth paragraph of Section B: "The aggregate annual compensation of the Trustees shall not exceed one per cent (1%) of the gross annual income of the Reorganized Company, provided, however, that if the Trustees elect one of their number to be managing Trustee, he may be paid and receive a further additional reasonable compensation, but such that his total compensation shall not exceed the Chicago Real Estate Board rate for like services."

5. By adding an additional paragraph to Section D as follows:

"8. Anything hereinbefore or hereinafter contained to the contrary notwithstanding all expenses of administra-



tion in this Court and in any State Courts shall be subject to the approval of this Court."

6. By inserting in Section F, after the words "(including taxes)", the following: "to provide funds for rehabilitating and/or remodeling the property of the Reorganized Company."

5. The Judge is of the opinion and the Court finds that the foregoing amendments and modifications to the Plan of Reorganization are not materially adverse to the interest of any of the creditors or stockholders of the Debtor, and no creditors or stockholders of Debtor who have heretofore filed acceptances of the Plan of Reorganization shall have the right to withdraw such acceptances by reason of said amendments and modifications.

6. That all objections heretofore filed in these proceedings to the Plan of Reorganization be, and the same hereby are, overruled.

7. The Judge is satisfied and the Court finds that

(a) The Plan of Reorganization is fair and equitable and does not discriminate unfairly in favor of any class of creditors or stockholders of Debtor and is feasible.

(b) The Plan of Reorganization complies with the applicable provisions of subdivision (b) of Section 77B of the Bankruptcy Act, as amended.

(c) The following are the only classes of creditors of Debtor whose claims have been filed herein who are affected by the Plan of Reorganization:

142 Class 3: Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, except with respect to said First Mortgage 6% Real Estate Gold Bonds comprised in Class 4 hereof.

Class 4: Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to First Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, with respect to Bonds numbered M-141 to M-165, both inclusive.

Class 5: Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to Second Mortgage 6% Real Estate Gold Bonds secured by Trust Deed dated September 1, 1928

from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee.

Class 7: Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to the Shares of Preferred Stock of Granada Apartments, Inc.

Class 8: Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property, with respect to the shares of Common Stock of Granada Apartments, Inc.

Class 9: Holders of claims allowed in these proceedings against Granada Apartments, Inc., or its property of whatever character, other than as above in the foregoing Classes enumerated, whether the same be secured or unsecured or evidenced by written instrument.

143 (d) The Plan of Reorganization has been accepted in writing by acceptances filed in these proceedings by or on behalf of creditors holding not less than two-thirds (2/3rds) in amount of claims in each class whose claims would be affected by the Plan of Reorganization and by or on behalf of the stockholders of Debtor holding a majority or more of the stock of the Debtor in each class.

(e) All amounts to be paid by the Debtor or by the Reorganized Company which is to acquire the property or assets of the Debtor pursuant to the Plan of Reorganization for services or expenses incident to the reorganization of the Debtor are to be subject, and are hereby directed to be subject to the approval of the Court.

(f) The Debtor is not a utility subject to the jurisdiction of any regulatory commission or commissions or other regulatory authority or authorities created by the laws of any State or States.

(g) The offer of the Plan of Reorganization and its acceptance are in good faith and have not been made or procured by any means or promises forbidden by the Bankruptcy Act, as amended.

(h) A reasonable time has been determined and fixed within which claims and interests of creditors and stockholders and claimants against the property of the Debtor may be filed or evidenced, and said time having expired, no claims not heretofore filed or evidenced herein may participate in the Plan of Reorganization, except on Order for cause shown.

(i) All other matters contained in the Bankruptcy Act

requisite to the submission and confirmation of a Plan of Reorganization have been complied with.

(j) Such schedules and information as are necessary to disclose the conduct of the affairs of the Debtor and the fairness of the Plan of Reorganization are a part of the records and files in these proceedings.

144 (k) The Reorganized Company issuing securities and acquiring the property of the Debtor under the Plan of Reorganization is authorized by its charter or by applicable State or Federal Laws to take all action necessary to carry out the Plan of Reorganization.

(l) There are no contracts of the Debtor which are executory in whole or in part and no unexpired leases which have been rejected or surrendered.

(m) By reason of the number of securities of the Debtor outstanding and the extent of the public dealing therein the preparation of a statement herein of what, if any, claims and shares of stock have been purchased or transferred by those accepting the Plan of Reorganization after the commencement or in contemplation of these proceedings and the circumstances of such purchases or transfer is impracticable and such statement need not be filed.

8. The Plan of Reorganization is hereby in all respects confirmed.

9. The provisions of the Plan of Reorganization and this Order shall be binding upon: (a) the Debtor, (b) all stockholders of Debtor, (c) all creditors of the Debtor and claimants against the property of the Debtor, secured or unsecured, whether or not affected by the Plan of Reorganization and whether or not their claims have been filed and, if filed, whether or not approved, including creditors who have not, as well as those who have, accepted the Plan of Reorganization.

10. The Committee shall proceed forthwith to carry out and consummate the Plan of Reorganization and the Orders of this Court relative thereto and shall in general take all steps, perform all acts and do all things necessary, convenient or advisable for the purpose of fully carrying out and effectuating the Plan of Reorganization according to its terms, but all such acts, steps and proceedings shall be taken subject to the supervision and control of this Court.

145 11. Counsel for the Committee shall forthwith proceed with the preparation of all indentures, agree-

ments, documents, participation certificates, releases, satisfactions, or other written instruments contemplated by the Plan of Reorganization or which may be necessary, convenient or advisable in connection with the consummation or execution of the Plan of Reorganization.

12. The Trustee heretofore appointed in these proceedings until such time as he shall convey, transfer and assign the property and assets of the Debtor to the Reorganized Company, and thereafter the Reorganized Company be, and hereby is, authorized and directed to pay out of funds of the Debtor then in the possession of the said Trustee, or out of the funds of the Reorganized Company as the case may be, all costs incident to the preparation and printing of any of the aforesaid instruments as set forth in paragraph 11 hereof, and any and all costs and expenses (including examination of title of the real estate of Debtor and the obtaining of a guaranty policy thereon) taxes, fees (except attorneys' fees) or expenses incurred in connection with any acts taken by the Committee and its counsel in the consummation and execution of the Plan of Reorganization.

13. Jurisdiction is hereby reserved by the Court to enter any and all further and supplementary Orders for the purpose of consummating the Plan of Reorganization and for facilitating the distribution of the Participation Certificates deliverable in accordance with the Plan of Reorganization and of dealing with the securities and interests to be surrendered by the holders thereof in accordance with the Plan of Reorganization.

146 14. (a) City National Bank and Trust Company of Chicago, an Illinois corporation, as Successor Trustee under Trust Deed dated September 1, 1928, from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, securing the First Mortgage 6% Real Estate Gold Bonds of Debtor be, and hereby is, authorized, empowered and directed upon receipt of written request from the Committee so to do, to execute, acknowledge and deliver an appropriate instrument satisfying the Decree entered December 18, 1931 in the Superior Court of Cook County, Illinois, in proceedings entitled "William A. Thuma, Complainant, vs. Granada Hotel Corporation, a corporation, et al., Defendants, No. 519151" and, if within five (5) days from the date of receipt of said written request from the Committee, as aforesaid, said City National Bank and Trust



Company of Chicago, as said Successor Trustee, shall fail, refuse, or neglect to execute, acknowledge or deliver such instrument of release of said Trust Deed and said satisfaction of Decree, then and in that event Carl R. Chindblom be, and hereby is, appointed Special Master herein for the purpose of executing, acknowledging and delivering said release and said satisfaction, and said Carl R. Chindblom, as Special Master be, and hereby is, authorized, empowered and directed to execute, acknowledge and deliver such instrument or instruments releasing said Trust Deed and satisfying said Decree and to do any and all acts necessary and proper in connection therewith.

(b) Charles H. Albers, Receiver of Central Republic Trust Company, as Successor Trustee under 147 Trust Deed dated September 1, 1928 from Granada Hotel Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee, securing the Second Mortgage 6% Real Estate Gold Bonds of Debtor be, and hereby is, authorized, empowered and directed, upon receipt of written request from the Committee so to do, to execute, acknowledge and deliver an appropriate instrument of release of said Trust Deed and, if within five (5) days from the date of the receipt of said written request from the Committee, as aforesaid, said Charles H. Albers, as Receiver of Central Republic Trust Company, as Successor Trustee, shall fail, refuse, or neglect to execute, acknowledge or deliver such instrument of release of said Trust Deed, then and in that event Carl R. Chindblom be, and hereby is, appointed Special Master herein for the purpose of releasing said Trust Deed, and said Carl R. Chindblom, as Special Master be, and hereby is, authorized, empowered and directed to execute, acknowledge and deliver an appropriate instrument releasing said Trust Deed and to do any and all acts necessary and proper in connection therewith.

(c) Upon and subject to the execution and completion of the foregoing matters contained in sections (a) and (b) preceding, all liability and indebtedness of Debtor with respect to said First Mortgage 6% Real Estate Gold Bonds and said Second Mortgage 6% Real Estate Gold Bonds shall be cancelled and extinguished and all deeds, conveyances, chattel mortgages or assignments of whatsoever character given at any time and conveying or intending to convey any property of the Debtor as security

under said respective Trust Deeds securing said respective Bonds, and any and all judgments, liens or claims for liens against the Debtor or its property with respect thereto shall be deemed satisfied, released, discharged, cancelled and extinguished.

148 15. The property and assets of Debtor to be conveyed, transferred and assigned to the Reorganized Company, when so conveyed, transferred and assigned shall be free and clear of all claims against the Debtor and its property and of its stockholders and creditors, save and except that the Reorganized Company shall be liable for and shall be obligated to pay all claims which, under the terms of the Plan of Reorganization, are to be assumed or paid by the Reorganized Company, including all costs of administration and other allowances made or approved by the Court and all amounts to be paid pursuant to the provisions of this Order.

16. Until the entry of the final decree herein all creditors and stockholders of the Debtor and claimants against the property and assets of the Debtor and all other persons, including sheriffs, marshals and other officers and deputies and any attorneys and agents of any of the foregoing be, and hereby are, enjoined and restrained from instituting, prosecuting or continuing any pending or subsequent suit at law or in equity in any Court whatsoever against the Debtor or the property and assets of the Debtor or against the Reorganized Company or the property and assets of the Reorganized Company, and from taking possession of or in any way interfering with the property and assets of the Debtor or with the property and assets of the Reorganized Company.

17. Attorneys, agents, committees, or other parties in interest may file their applications for compensation for services rendered and to be rendered and for reimbursement for actual and necessary expenses incurred or to be incurred in connection with these proceedings and the Plan of Reorganization with the Clerk of this Court on or before September 14, 1937.

149 18. For the determination of all other matters germane to these proceedings not heretofore determined and for the purpose of hearing and considering applications for fees and expenses and for the determination and allowance of fees and expenses and for the purpose of making such further Orders as the Court may deem proper with respect to the consummation of the Plan of Reorganization

and for the entry of a final decree herein, this hearing be, and hereby is, continued to September 14, 1937, at 10:00 o'clock A. M. without further notice, and the Court hereby expressly reserves jurisdiction of all and such matters for such determination as the Court may hereafter deem proper.

Anything herein contained to the contrary notwithstanding, all expenses of administration in this and any other Court shall be subject to the approval of this Court.

Enter:

Barnes,  
Judge.

(July 14, 1937)

Entered  
July 15,  
1937.

150 And afterwards, to wit, on the 15th day of July, A. D. 1937, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

151 IN THE DISTRICT COURT OF THE UNITED STATES.  
• • (Caption—65811.) • •

### ORDER.

This matter coming on to be heard on Motion of the Protective Committee, and the Court being fully advised in the premises;

It Is Ordered that the Order Confirming the Plan of Reorganization of Debtor heretofore entered in these proceedings be, and hereby is, amended by inserting in line 6 of subparagraph (h) on page 5 thereof, immediately preceding the word "claims", the word "no".

Enter:

Barnes,  
Judge.

(July 15, 1937.)

157 And afterwards, to wit, on the 30th day of August, A. D. 1937, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan, District Judge, appears the following entry, to wit:

158 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—65811.) • •

Entered  
Aug. 30,  
1937.

**ORDER.**

This matter coming on to be heard on motion of City National Bank and Trust Company of Chicago, as Trustee, and on due notice to all parties of record;

It Is Ordered that leave be, and it is hereby, given City National Bank and Trust Company of Chicago to file instant its report and account.

It Is Further Ordered that all parties in interest file objections, if any, thereto within ten (10) days and that the hearing on said account and objections, if any, be and it is hereby set for September 15, 1937 before the Honorable John P. Barnes.

Enter:

Philip L. Sullivan,  
*Judge.*

Dated August 30, 1937.

159 And on, to wit, the 30th day of August, 1937, came the City Natl. Bank & Trust Co. of Chicago, Trustee, by its attorneys and filed in the Clerk's office of said Court its certain Report and Account in words and figures following, to wit:

Filed  
Aug. 30,  
1937.

160 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—65811) • •

**REPORT AND ACCOUNT OF CITY NATIONAL BANK  
AND TRUST COMPANY OF CHICAGO, AS  
TRUSTEE.**

Your petitioner, City National Bank and Trust Company of Chicago, a corporation, respectfully represents:

1. That it is a national banking association organized under the laws of the United States duly authorized and empowered to accept and to execute trusts and to conduct a Trust business within the State of Illinois.

2. That by reason of the premises hereinafter set forth it is, and for a long time prior to the filing of the petition in bankruptcy herein was, Successor Trustee under trust



deed recorded in the Recorder's Office of Cook County, Illinois, as Document 10161996.

3. That the said trust deed was made by Granada Hotel Corporation, dated September 1, 1928 and recorded October 1, 1928, and was, together with a supplemental trust deed likewise made by Granada Hotel Corporation dated September 1, 1928 and recorded October 1, 1928 as Document 10161997, given to Chicago Trust Company, as Trustee, to secure the payment of the first mortgage bonds, coupons and indebtedness involved in this proceeding.

4. That thereafter on the 25th day of July, 1931, Chicago Trust Company consolidated with Central Trust Company of Illinois under the statutes of the State of Illinois to form Central Republic Bank and Trust Company, which later changed its name to Central Republic Trust Company.

5. That on August 7, 1933, defaults having been made by Granada Hotel Corporation and its successor in title, Granada Apartments, Inc., in the performance of certain of the covenants and conditions of the said trust and supplemental trust deeds, Central Republic Trust Company, your petitioner's predecessor in trust, filed its cross-bill of complaint to foreclose the said trust and supplemental trust deeds in proceedings then pending in the Superior Court of Cook County, Illinois, as Cause No. 519151, wherein William A. Thuma was plaintiff and Granada Apartments, Inc., a corporation, and others were defendants, in which said proceedings Chicago Title and Trust Company, a corporation, had been appointed and was acting as Receiver for the real estate and premises described in said trust deed and the rents, issues, income and profits thereof; that upon the filing of said cross-bill of complaint on, to wit, the 7th day of August, 1933, Central Republic Trust Company procured in said proceedings the entry of an order extending the said receivership fully to protect its interests as such cross-complainant, and later, on March 22, 1934, by stipulation of all parties in interest, including Granada Apartments, Inc., procured an order directing the said receiver forthwith to surrender to it as Trustee possession of the said premises and requiring said receiver thereafter to file its final report and account upon the coming in and approval of which said account the said receiver was directed to turn over to Central Republic Trust Company the funds and securities in its possession after deduction of such fees and charges as might be allowed by the court, Central Republic Trust Company, as Trustee, being expressly ordered to assume payment of the

receiver's certificate of indebtedness theretofore issued in said proceeding to Indemnity Insurance Company of North America.

6. That pursuant thereto Central Republic Trust Company did on or about the 22nd day of March, 1934 enter into possession of the said premises and thereafter operated the said premises until January 4, 1935.

7. That on the 20th day of November, 1934 William L. O'Connell was appointed receiver of Central Republic Trust Company by Edward J. Barrett as Auditor of Public Accounts of the State of Illinois, and continued to act as such receiver until the date of his death, at which time Charles H. Albers was appointed and is now the duly qualified and acting receiver of Central Republic Trust Company; that the said William L. O'Connell, as such receiver, duly resigned the trusteeship under said trust deed and supplemental trust deed, and Chicago Title and Trust Company, a corporation, named as successor trustee in the indenture in the event of such resignation, filed in said foreclosure proceedings its written refusal to act as successor trustee; that thereupon on, to wit, the 3rd day of January, 1935, your petitioner, City National Bank and Trust Company of Chicago, was appointed successor trustee under said trust deed by the Superior Court of Cook County, Illinois, in said foreclosure proceedings, and it accepted said appointment and on the 3rd day of January, 1935 took possession of the said mortgaged real estate and premises, together with all of the personal property located therein, and William L. O'Connell, as receiver of Central Republic Trust Company, was ordered to file the final report and account of Central Republic Trust Company in said foreclosure proceedings.

8. That thereafter William L. O'Connell, as receiver of Central Republic Trust Company filed the final report and account of Central Republic Trust Company in said foreclosure proceedings, and on the 11th day of February, 1935, by order of said court, the said final report and account was approved and said William L. O'Connell as such receiver was authorized and directed to pay to Igoe and Flaherty, his attorneys, the sum of One Hundred Fifty Dollars (\$150) and to pay the balance of the funds in his possession to your petitioner as successor trustee and to deliver to your petitioner the chattel mortgage note in the sum of Seventy-five Thousand Dollars (\$75,000) and the chattel mortgage securing the same, recorded in the Recorder's Office of Cook County, Illinois as Document

B-2702627, together with certain second mortgage bonds of Granada Hotel Corporation in the principal sum of Thirty Thousand Dollars (\$30,000), upon which payment and delivery it was directed that the said receiver and Central Republic Trust Company be forever discharged from any and all liability under and in connection with said trust indentures or the administration of said trust, and that the said funds, documents, and bonds were so paid and delivered by the receiver to your petitioner, City National Bank and Trust Company of Chicago, as successor trustee, 162 by reason of which there was transferred to your petitioner as successor trustee in possession of said real estate and premises the sum of Nine Thousand Nine Hundred Ninety-five Dollars and Forty-six Cents (\$9,995.46).

9. That such further proceedings were had in the said foreclosure case that your petitioner City National Bank and Trust Company of Chicago, as such successor trustee, was substituted as complainant therein, and on February 18, 1935 filed its supplemental bill of complaint, and the cause was referred to Robert C. O'Connell, a Master in Chancery of the said court, who, on due notice to all parties in interest, took the proofs and filed his report in writing in the said cause, which said report was by order of the said Superior Court duly approved and the fees and charges of the said Master in Chancery were fixed and taxed as costs in said proceeding, following which and on the 18th day of December, 1936 a decree of sale was entered in the said cause finding the amounts due your petitioner, City National Bank and Trust Company, for its own benefit and for the benefit of all of the holders of unpaid bonds and coupons secured by and outstanding under said trust and supplemental trust deeds and secured also by the chattel mortgage involved in this proceeding, which said decree also found, among other things, the amount due on the said receiver's certificate of indebtedness assumed by your petitioner pursuant to court order as aforesaid, and fixed the relative priority of the liens securing the several sums respectively found due the various parties.

10. That in and by its supplemental complaint so filed in said foreclosure proceedings City National Bank and Trust Company of Chicago sought, among other things, an accounting and statement of the amounts due it from Granada Hotel Corporation and Granada Apartments, Inc., and an accounting as to the precise amount due it under its said trust deed, and that upon the hearings of the said cause your petitioner accounted to the defendants for



all rents, issues, income and profits collected and disbursed by it for the period commencing January 3, 1935 and ending September 30, 1936, and showed that the balance in its possession as of September 30, 1936 was One Thousand Six Hundred Eighty Dollars and Fifty-six Cents (\$1,608.56), which in and by said decree of sale was applied on the indebtedness found due City National Bank and Trust Company of Chicago, as Trustee aforesaid, by reason of which your petitioner represents that it has fully accounted for the period ending September 30, 1936 in the general accounting had between the parties to said foreclosure action, but further represents to the court that the chancellor in said foreclosure proceedings in and by said decree expressly indicate that by the entry thereof he did not purport to approve any account of your petitioner as successor trustee in possession of the said premises; and your petitioner represents that it held such possession not as an officer of the Superior Court of Cook County, Illinois and not by virtue of any order thereof, but as a matter of right and as mortgagee in possession of the said real estate and premises after condition broken, by reason of which its accounting might not have been properly presented to the court for approval but might be had only by way of accounting between the parties to the action.

163 11. That from the 3rd day of January, 1935 to the 17th day of May, 1937, it continuously possessed and operated the mortgaged property and collected the rents, issues, income, and profits thereof; that on the 17th day of May, A. D. 1937 it surrendered possession thereof to Weightstill Woods, Trustee in Bankruptcy herein. That during the period of its operation it retained Barrow, Wade, Guthrie & Company, accountants and auditors of Chicago, Illinois, to audit all receipts and disbursements and supply monthly statements in respect thereof, and that such statements have been furnished to your petitioner by said accountants for each and every the months of its possession, which said statements were consolidated by Barrow, Wade, Guthrie & Company in the summary analysis of cash accounts hereto attached marked Exhibit A and made a part hereof; that all of the disbursements made by your petitioner as Trustee are supported by vouchers which are available for inspection by any party in interest but which your petitioner avers are so voluminous as to render it impracticable to exhibit them forthwith; that the said monthly audits are likewise available for the inspection of the Trustee in Bankruptcy herein and his auditors.



12. That in and by your petitioner's said trust deed it is, among other things, provided

"The Trustee in possession of the mortgaged premises under the provisions of Section 2 hereof is hereby authorized to use, operate, lease and manage the same by such agents as Trustee may select and to apply the rents, issues, earnings, income and profits of and from the mortgaged premises (1) to the expense of operating the mortgaged premises, including the reasonable compensation of Trustee and its agents; (2) to the maintenance of insurance, the payment of taxes, assessments and other governmental charges, the payment of mechanics and materialmen's liens or other liens prior to or coordinate with the lien of this trust deed, to the putting or maintenance of improvements on the mortgaged premises in tenantable and usable condition and/or to such other like or unlike purposes as Trustee may in its discretion deem advisable for the preservation of the security afforded thereby; (3) to the payment of interest secured hereby then due and unpaid, pro rata in the direct order of maturity thereof, with interest thereon at the rate of 7% per annum; and, last, to the payment of principal amount then due, whether by lapse of time or declaration, pro rata, without respect of differences in maturity thereof, with interest thereon at the rate of 7% per annum, but always subject to the provisions of Sections 6, 7 and 8 of Article III hereof."

13. That the operation of the mortgaged premises by the receiver in the state court foreclosure proceedings was subject to the reasonable charges of the receiver and its counsel, which in the aggregate did necessarily exceed the expense of operation by the trustee in possession.

164 Accordingly, your petitioner's predecessor in trust, to obtain management inherently more economical, determined to take possession of the mortgaged property and to operate it, and to procure such possession without prolonged litigation and the delay and expense incident thereto it negotiated and procured the stipulation of all of the parties as aforesaid, but only on condition that Cody Trust Company, which had underwritten three-fifths of the issue, might designate an independent person not associated with that Company nor with the Trustee to act as agent of the Trustee and to keep Cody Trust Company informed as to the status from time to time. As a consequence your petitioner's predecessor in trust retained Edward Hall as agent to assist in and about the operation of said premises at an agreed compensation of Fifty Dollars (\$50.00) per

month, and the said Edward Hall during all of the period of trustee operation acted as such agent.

14. Your petitioner further represents that the furniture, furnishings and equipment originally placed in the improvement on said premises were not paid for out of the proceeds of the said first mortgage loan and that to secure the unpaid purchase price thereof Albert Pick & Company took a chattel mortgage thereon, and that default having been made under the said mortgage it brought its action to foreclose the same in the Circuit Court of Cook County, Illinois in proceedings which progressed to a decree of sale, by virtue of which the furniture and furnishings were sold and purchased by International and Industrial Securities Corporation, the successor to Albert Pick & Company, but only after litigation in respect thereof had been carried without effect to the United States Supreme Court. During such litigation Cody Trust Company caused the premises to be refurnished, the unpaid portion of the purchase price being secured by the conditional sales contract now held by the Continental Illinois National Bank and Trust Company of Chicago, as set forth in the Plan herein; that at the time that the purchaser at said chattel mortgage foreclosure sale was permitted to remove the furniture and furnishings from said premises the court in the foreclosure proceedings aforesaid reserved jurisdiction to determine whether the stove, carpets, in-a-door beds, china and kitchen cases were fixtures and part of the security intended to be effected by your petitioner's trust deeds or whether they were removal personalty, subject to the Pick chattel mortgage aforesaid. That your petitioner's predecessors in trust litigated this question in the foreclosure proceedings and in the Appellate Court, and by way of petition for certiorari to the Supreme Court of Illinois, but that it was held that those items were not fixtures but were a part of the security intended to be given by the Pick Chattel mortgage. During all of the time of this litigation the earnings of the property were insufficient to provide a fund sufficient to purchase items in replacement of these or with which to settle the claim of the purchaser at the Pick Chattel mortgage foreclosure sale. Moreover your petitioner represents that the removal of the items in controversy would have rendered the premises untenable and would have materially injured the building itself. At the conclusion of that litigation, however, your petitioner's predecessor in trust was able

to effect a settlement between the purchaser and the state court receiver, through which the purchaser was paid in cash, partly through funds then in the hands of the receiver and partly through funds provided by the receiver under court order on security of the said receiver's certificate of indebtedness which your petitioner's predecessor in trust was directed to assume as aforesaid.

15. At the same time your petitioner's predecessor in trust succeeded in obtaining from all parties in interest the chattel mortgage and note mentioned in the plan herein, which for the first time gave the bondholders a lien on the furniture, furnishings and equipment as additional security for the payment of their bonds, such lien of course being subject to the receiver's certificate of indebtedness and to the conditional sales contract held by the Continental Illinois National Bank and Trust Company of Chicago as aforesaid.

16. That your petitioner maintains as part of its Trust Department a management division which in this case and in the case of other hotel properties directly operates through its own officers and employees; that upon taking possession your petitioner set up books of account to show all receipts and disbursements, the operating books themselves having been maintained at the hotel premises by your petitioner's employees, the net revenue for each month being transmitted to your petitioner's Trust Department where it was carried in its trustee in possession account, from which disbursements, for the most part non-operating disbursements, were made.

17. At the time your petitioner's predecessor in trust took possession of said premises the general taxes and special assessments unpaid were as follows:

1928	Cody Trust holds Sales Certificates for \$	9,041.86
1929		9,764.15
1930		8,450.11
1931		10,431.38
1932		8,153.84

Special Assessment due 1931—  
Withdrawn for

148.75

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\$45,990.09,

exclusive of interest and penalties. During the time of the trustee in possession management, the following payments were made on account of taxes, to wit:

Tax	Principal	Interest	Total Paid
1929 — 9-24-34	\$ 2,488.79	\$ 511.21	\$ 3,000.00
1929 — 11- 5-34	1,000.00		1,000.00
1929 — 3-20-35	767.78	180.43	948.21
1929 — 4-26-35	617.77	148.27	766.04
1929 — 5-28-35	617.77	151.35	769.12
1929 — 6-24-35	250.83	62.71	313.54
1933 — 7-29-35	1,417.63	85.65	1,503.28
1933 — 8-19-35	192.25	15.38	207.63
1929 — 9-24-35	942.49	249.76	1,192.25
1929 — 10-28-35	1,724.97	465.74	2,190.71
1929 — 11-27-35	1,086.42	298.77	1,385.19
1929 — 1- 6-36	8.38	2.35	10.73
1930 — 1- 6-36	1,149.67	247.18	1,396.85
1930 — 2- 6-36	1,239.66	272.73	1,512.39
1930 — 3- 6-36	218.17	49.20	267.37
166 1929 — 3- 6-36—Int. made on payment made 11/5/34—		210.00	210.00
1930 — 3-31-36	\$ 744.83	171.32	916.15
1930 — 5-27-36	956.76	229.62	1,186.38
1930 — 6- 9-36	347.52	85.12	432.64
1930 — 6-30-36	987.46	241.93	1,229.39
1930 — 7-27-36	1,356.24	339.06	1,695.30
1930 — 8-22-36	891.47	227.33	1,118.80
1931 — 8-22-36	492.00	101.34	593.34
1931 — 9- 8-36	577.09	132.73	709.82
1931 — 11- 5-36	1,632.10	350.90	1,983.00
1931 — 12- 1-36	700.00	154.00	854.00
1931 — 1- 2-37	1,041.86	234.42	1,276.28
1931 — 2- 5-37	833.58	175.05	1,008.63
1931 — 2- 5-37	235.93	55.44	291.37
1931 — 2-20-37	536.71	126.13	662.84
1931 — 2-20-37	278.64	58.52	337.16
1931 — 4-20-37	819.67	180.33	1,000.00
1932 — 5-11-37	843.88	157.12	1,001.00
Total Payments	\$26,998.32	\$5,971.09	\$32,969.41,



leaving tax balances as of May 17, 1937 as follows:

1928 Cody Trust holds Sale Certificate for	\$ 9,041.86
1929 Paid in full	
1930 Paid in full	
1931 Balance open	2,747.09
1932 Balance open	6,752.78
1933 Balance open	5,016.41
1934 Unpaid in full	7,400.38
1935 Unpaid in full	8,406.82
	<hr/>
	\$39,365.34

♦ Special Assessment, due 1931—Withdrawn 148.75

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\$39,514.09

That there has been delivered to the Trustee in Bankruptcy herein the receipted tax bills evidencing the payments made by your petitioner's predecessor in trust, and that your petitioner has delivered to the said Trustee the receipted tax bills evidencing the payments made by it.

18. That it is noted above that Cody Trust Company holds a tax certificate evidencing sale on account of the 1928 general taxes; that your petitioner had occasion to investigate the situation in respect of this item and finds, first, that Cody Trust Company was under obligation to pay the 1928 taxes upon receipt of bills therefor and is not entitled in its opinion to hold and to assert as a lien the certificate on account of the sale thereof; Second, that the said certificate was pledged by Cody Trust Company with the Chicago Bank of Commerce, now in receivership; third, that the said certificate does not show as an objection upon the letter of opinion of the Chicago Title and Trust Company obtained this year; and, fourth, that no claim has been filed by anyone on account of said certificate or said tax.

167 19. That your petitioner retained Eugene and Max Fuhrer to make surveys in respect of the unpaid taxes, the propriety of the assessment, and to attend to objections and reductions with respect thereof, and that the said Eugene and Max Fuhrer performed such services and rendered bills, which were paid by your petitioner as set forth in its account, the vouchers in each instance having likewise been delivered to the Trustee in Bankruptcy herein.

20. That out of the trustee in possession funds your petitioner likewise made payments to the Continental Il-

Illinois National Bank and Trust Company of Chicago in reduction of the amount due on its conditional sales contract aforesaid, and also made various payments on account of the receiver's certificate of indebtedness, the vouchers for which have likewise been delivered by it to the Trustee in Bankruptcy herein.

21. That prior to the filing of the petitions herein involuntary petitions under 77B were filed at Danville, Illinois against Granada Hotel Corporation and Granada Apartments, Inc. In the former case, over the objection of your petitioner that the proceeding was not predicated upon any act of bankruptcy or the existence of any equity receivership or on the consent of the debtor Company, the court approved the petition and sought to appoint a trustee to take possession of the premises from your petitioner; that your petitioner questioned the jurisdiction of the court, appealed to the Circuit Court of Appeals for this Circuit, and from its adverse opinion by way of certiorari to the Supreme Court of the United States, where its objections to the jurisdiction were upheld, with the result that the said invalid proceeding was dismissed, as was the companion case brought with the same defects against Granada Apartments, Inc., and your petitioner represents that the court in said proceedings was wholly without jurisdiction and that no marketable or merchantable or valid title could be obtained, in its opinion and that of its counsel, through any proceedings had therein, and further represents that it would have been impossible to obtain any policy guaranteeing the validity of such proceedings. That in connection with the said bankruptcy proceedings your petitioner retained counsel, became liable to pay its reasonable charges and also the expenses incurred by it, which in the aggregate amounted to Three Thousand Eight Hundred Fifty-seven Dollars and Seventy-nine Cents (\$3,857.79), which it disbursed as shown in its report, voucher for which has likewise been delivered to the Trustee in Bankruptcy herein.

22. That by order of court entered in the foreclosure proceedings as aforesaid your petitioner paid the fees of Igoe and Flaherty in the sum of One Hundred Fifty Dollars (\$150) and also paid the fees of the Master in Chancery incurred by it in the foreclosure proceedings taxed as costs, as aforesaid, voucher for which has likewise been delivered to the Trustee herein.

23. That during the period of its operation your petitioner has made a charge of not more than four per cent

(4%) of the gross cash receipts of and from said premises, inclusive of the agency fee paid to Edward Hall as aforesaid, which charge it represents to be well within the rate recommended in such cases by the Chicago Real Estate Board.

168 24. That in the operation of this and other hotel properties bills are incurred each month which are not paid until the following month, so that at the time of the appointment of the Trustee in Bankruptcy herein and at the time of the surrender of possession to him by your petitioner there were numerous bills unpaid, all of which were properly incurred and are charges against the trust estate. With the consent of the Trustee in Bankruptcy herein your petitioner paid certain of the said bills out of funds in its possession, and on May 25, 1937 turned over to the Trustee in Bankruptcy the sum of Seven Hundred Seventy-three Dollars and Forty Cents (\$773.40), representing the balance of cash then on hand, but your petitioner avers that there were other bills which as of May 25, 1937 had not as yet been obtained and which are as follows:

		Still Unpaid	Paid by Federal Trustee—Check No. and Date
Commonwealth Edison Co.....*	\$270.24	\$270.24	
Barrow, Wade, Guthrie Co.....	135.00	135.00	
Lumbermen's Mutual Casualty Co. Insurance—O. L. & T. and Ele- vator .....	212.53	212.53	
Workmen's Compensation.....	80.72	80.72	
Joyce & Co., Inc.—Insurance-Fidei- city Bond.....	2.37	2.37	
City of Chicago—Bureau of Water*	137.07	137.07	
Illinois Bell Telephone Co.....	193.25		Included in Check #53—6/12/37
Payroll—May 16th and May 17th..	123.31		Included in Checks— 6/1/37
Old Age Benefit Tax.....	1.21	1.21	
Topics—Printing.....	50.00		Check #49—6/12/37
Peoples Gas Light & Coke Co.....*	48.21	48.21	
Guests' Valet.....	42.81		Included in Check #41—6/12/37
Newspapers .....	24.04		Included in Check #48—6/12/37
Guests' Laundry.....	17.67		Included in Check #45—6/12/37
Rubbish Removal.....	5.48		Included in Check #47—6/12/37
Hardware .....	5.08		Included in Check #50—6/12/37
Brink's, Inc.....	4.50	4.50	
Kane Service.....	1.64		Included in Check #46—3/12/37
Goldstein & Company.....	50.00	50.00	
	\$1405.13	941.85;	

\* These accounts so marked are listed with discounts deducted, and such discounts may not be allowed. See invoices for discounts.

but which your petitioner is without funds in the trust estate to pay and which should be assumed and paid 169 by the Trustee in Bankruptcy herein, including its management fee for the period from May 1, 1937 to May 17, 1937 amounting to Two Hundred Fifteen Dollars and Ninety-six Cents (\$215.96) (including the charge of its agent, Edward Hall, for such period), for which amount it drew its check shown in its account herein, but the said check has not been released by the Trustee in Bankruptcy.

25. Because of the amounts required to be paid on account of the furniture and equipment, the amount due on account of unpaid taxes could not be reduced as fast as otherwise would have been the case; that from time to time the County Treasurer brought proceedings for the appointment of a tax receiver for the said premises, and in such proceedings your petitioner was compelled to, and did, enter into arrangements to apply substantially all of the net income on account of unpaid taxes, payments on such account having been made down through the month of May, 1937, the last payment made on account having been more than sufficient fully to pay the bills which your petitioner now asks that the Trustee be required to assume. The payments stopped interest and penalties and were essential to prevent the appointment of a tax receiver down to the time that the Trustee herein was appointed.

26. That your petitioner in its foreclosure proceedings aforesaid made every effort to reach a conclusion beneficial to the bondholders, but that due to the income situation which prevailed until recently due to a low deposit of bonds with the bondholders' committee and due to the amounts outstanding on account of taxes, furniture, and equipment and to the holding of the Supreme Court of Illinois that the Trustee was not entitled to bid in the premises for the benefit of all of the bondholders, it was not possible to effect a reorganization and to go to sale in the said foreclosure proceedings or for your petitioner to bid in for them. Your petitioner's remedies under the law of Illinois, however, include the separate and concurrent remedies of foreclosure and of mortgagee in possession, and your petitioner avers that under the law of Illinois a mortgagee without any foreclosure proceedings whatsoever may continue in possession and collect the income, and continue to do so until its debt is paid regardless of how long that may take, and that the sole remedy of the owner of the property is by way of a proceeding in



equity to redeem, in which proceeding on tender and payment of the amount due the lien may be discharged and the trustee removed from possession. Your petitioner invoked all available remedies and faithfully and competently managed and operated the mortgaged property and collected the rents, issues, income and profits thereof, and during the period of its operation very substantially reduced, as shown by its report, the charges against said property secured by liens prior to the lien of the bondholders.

27. That the property involved in these proceedings is equipped with a heating and refrigeration plant which services not only the Granada but also two other properties, namely, the Arlington Hotel and the Lincoln Park Manor; that long prior to any default under the trust deeds on the Arlington and Granada properties the owner corporations entered into an agreement under which the Granada undertook to furnish the Arlington heat, water, hot water, and refrigeration for the sum of Nine Hundred Ten Dollars (\$910) per month. In December 170 of 1933, prior to the time that Central Republic Trust Company took possession of the Granada property, Granada Apartments, Inc., and Central Republic Trust Company, as trustee in possession of the Arlington, entered into a new agreement by which the Granada would furnish such service to the Arlington for Six Hundred Dollars (\$600) per month. When your petitioner's predecessor in trust took possession of the Granada it followed this agreement and accepted \$600 per month for such service rendered to the Arlington. Its election so to do was predicated on a survey of the cost of such service made both by its own and independent engineers, and your petitioner avers that the sum of \$600 per month obtained by it from the Arlington property by reason of such services was not only a fair and reasonable charge therefor but represented and represents a profit to the Granada property.

28. The Trustee in Bankruptcy herein asserts the fair value of such service to the Arlington to be One Thousand Dollars (\$1,000) per month. Your petitioner avers that during these summer months the Granada is furnishing no heat to the Arlington and that the sum of \$600 per month represents a profit to the Granada; moreover, that the refrigeration plant has become obsolete and ineffective and a deterrent to the procuring of maximum occupancy and rentals. More than a year and a half ago various

units of refrigeration at the Arlington were replaced with individual units, and the Arlington is now installing individual units throughout.

29. That at the time that your petitioner took possession of the Granada there was a valet shop in the basement of the Granada, being maintained for the convenience of Granada tenants. The Arlington had been sending work to the Granada valet shop, which increased the volume for the operator thereof, who paid to the Arlington a commission for the work sent. The valet was not occupying space in the Arlington and the Arlington was at liberty to send its work wherever it pleased, and if it had done so it would have gotten the same or a better commission, but as a matter of convenience to the Granada it continued to send its work to the Granada valet. Recently that practice has been discontinued.

30. The Granada Hotel contains extensive non-revenue producing space on the ground or street floor. Your petitioner represents to the Court, first, that the zoning ordinances of the City of Chicago applicable to the Granada property prevent the effective use of the space for commercial purposes either by your petitioner or by the Trustee in Bankruptcy or any new company; second, aside from the zoning ordinances, to remodel for commercial use entails an improvement which a mortgagee in possession under the laws of the State of Illinois (or a trustee in bankruptcy) is not entitled to make; third, remodeling for commercial use would have entailed, and would now entail, heavy expense beyond the present ability of the estate to provide; and, fourth, the neighborhood is such that, even in the absence of a restrictive or prohibitive zoning ordinance, the space if remodeled for commercial use cannot reasonably be expected to produce a revenue which would either justify the work or would permit operation profitable to tenants.

171 31. That in addition to the funds hereinbefore mentioned, your petitioner holds the following funds in the following accounts which it is prepared to disburse on court order:

\$36.00 covering September 1, 1931 maturity for interest coupons;

\$27.68 in an excess tax account;

\$4.78 on deposit in an accrued interest account, representing accrued interest on bonds which matured March 1, 1931 and which bonds were paid on March 24, 1931.

Wherefore, your petitioner asks that this its report and account be approved and that the Trustee in Bankruptcy herein be directed to assume and forthwith to pay the unpaid bills and charges aforesaid.

City National Bank and Trust Company of Chicago, as Trustee,  
By John J. Bickel, Jr.,  
Assistant Trust Officer.

172 State of Illinois, }  
County of Cook. } ss.

John J. Bickel, being first duly sworn on oath, deposes and says that he is Assistant Trust Officer of City National Bank and Trust Company of Chicago; that he has read the above and foregoing petition and report by it subscribed, knows the contents thereof, and that the same is true.

John J. Bickel.

Subscribed and sworn to before me this 30th day of August, A. D. 1937.

Berthel W. Peterson,  
Notary Public.

(Seal)

(Exhibit A hereto attached not copied.)

Filed  
Sept. 9,  
1937.

173 And on, to wit, the 9th day of September, 1937, came Weightstill Woods, as Trustee and filed in the Clerk's Office of said Court his certain Answer and Counterclaim and Objections in words and figures following, to wit:

174 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—65811) \* \*

Answer and Counterclaim by Federal Trustee to petition filed August 30, 1937, by City National Bank and Trust Company for approval of accounts; and objections by Federal Trustee to claims by City National and its counsel, for fees and expenses, in Superior Court and in this Court.

Weightstill Woods,  
Federal Trustee,  
Pro se.

SUGGESTIONS BY FEDERAL TRUSTEE TO SUR-  
CHARGE AND FALSIFY ACCOUNTS AND TO  
DENY ALL CLAIMS BY CITY NATIONAL BANK  
AND TRUST COMPANY, ITS COMMITTEE AND  
THEIR COUNSEL; AND PETITION BY FEDERAL  
TRUSTEE FOR GENERAL RELIEF AGAINST RE-  
SPONDENTS HEREIN NAMED.

A. Weightstill Woods by order of this Court entered May 17, 1937, was appointed and now remains the duly qualified and acting federal trustee for estate of debtor in these proceedings.

C. Your federal trustee has filed in this Court on June 23rd his general objections in writing. He now enlarges said objections by special matter; and makes counterclaim to surcharge and falsify certain items in account of City National Bank and Trust Company, and to recover moneys due, from the respondents herein mentioned, to estate of debtor as follows:

## National, Its Committee and Its Counsel.

State Court cannot determine an allowance for this Court. Paramount law which is effective here, supersedes whatever was done in that Court. Also said Superior Court decree is void because City National and its counsel there sought to serve conflicting interests and to act in opposite capacities. Also void because Granada Hotel Corporation was dissolved by decree of Superior



Court at suit of Attorney General May 7, 1930, in case 50985, more than two years before said cross-complaint for foreclosure was filed on August 11, 1933, in said case 519151 Superior Court. Also City National, because it was in possession as a volunteer trustee as owner, cannot charge for any services by itself or counsel. All their acts merely postponed the proceedings in this Court. Said services were a surplusage and have no value to debtor estate. Also said Superior Court decree nowhere says that any sum for any purpose was due to anyone, from debtor now at bar. Also Superior Court decree concludes as follows:

"That as of September 30, 1936, the said cross-complainant (City National) represents it has on hand a balance of \$1,608.56, which sum should be applied on the indebtedness found due in this decree in the above mentioned order of preference and priority \* \* \*.

"The Court by the entry of this decree does not approve the accounts of the trustee in possession (City National) of the premises involved herein."

The language in italics was written with a pen by 176 the Superior Court Judge. The proceedings in Superior Court do not aid or sustain any claim by the respondents here.

#### Additional Facts to Sustain Counterclaim by Debtor Estate.

E. City National management of Granada property lacked reasonable skill and ordinary diligence. The incinerator was not kept in repair; whereby its interior crumbled so that the heat damaged the surrounding walls. The auxiliary pump at Granada for circulating brine throughout the refrigeration plant for Granada Arlington and Lincoln Park Manor hotels, was left out of repair for several years, whereby said pump was not usable, thus putting entire load upon and damage was caused to one pump in service, and great strain to the entire refrigeration plant. City National showed eagerness to bail out Cody Trust Company and its officers in paying furniture contract and receiver certificate which were outside any duties of real estate trustee, but had no time to make needed repairs or to seek new tenants for vacant lobby floor space. The many sums of money hereinafter mentioned as taken or paid out by City National without authority, should have been applied

in payment of taxes to prevent litigation and accruing penalties. Failure so to do caused the Skarda proceeding filed September 12, 1934, and other wrongs to debtor estate. During the years 1933 to 1937, City National by willful neglect failed to rent or secure any substantial revenues from valuable and extensive space on the street or lobby floor and the basement of said Granada property. Also City National shows absence of good faith by its manner of bookkeeping. The records kept at its direction at the hotel show only the hotel operating receipts and expenditures. Monthly all net cash balances were drawn out of hotel bank account and transferred to other records, at City National Bank not available to any parties in interest and not yet opened to examination by this Court. Vouchers have not been submitted for large sums of money. City National also gave wrongful assent to partial accountings by Central Republic Trust Company and predecessor, which are incomplete as hereinafter shown and stated. By foregoing and other conduct the City National as voluntary trustee caused loss and damage rather than advantage to debtor estate. For this it must pay.

*Farm Mortgage Company v. Cesar*, 62 Pac. (2d) 1269.

Also that by the statute of Westminster Second (13 Edward I Chapter 14 year 1285) provision is made as follows:

"That all manner of waste done to the damage of any person, there shall from henceforth be no writ of prohibition awarded, but a writ of summons, so that he of whom complaint is (made) shall answer for waste done at any time \* \* \* and after the inquest returned they shall pass unto judgment, like as is contained in the statute of Gloucester."

That said statute of Gloucester (VI Edward I Chapter 5 year 1278) provides:

"And he which shall be attainted of waste, shall lose the thing that he has wasted, and moreover shall recompense thrice so much as the waste shall be taxed at."

That the continuance of this law is evidenced by statute of Illinois approved February 23, 1819, being section 10 of an "Act Concerning Occupiers of Land" (now section 62 of Chapter 45 Ill. Rev. Stat. 1937) reading thus:

"That nothing in this act shall be construed so as to

prevent any court from issuing a precept to stay 177 waste, and ruling the party to give bond and security in such manner as such court may think right."

And said statutes of 1278 and 1285 remain established in Illinois by virtue of section 1, Act March 3, 1845 (now Chapter 28, Ill. Rev. Stat. 1937) reading thus:

"That the common law of England, so far as the same is applicable and of a general nature, and all statutes or acts of the British Parliament made in aid of, and to supply the defects of the common law, prior to the fourth year of James the First (1629) \* \* \* and which are of a general nature and not local to that kingdom, shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority."

Whereby City National should pay and this Court should order payment for benefit of the debtor estate, a sum three times all loss and waste occasioned by or arising from any failure of duty shown in this proceeding.

F. Suggestions Against Account and Report by City National and Its Counsel Filed August 30, 1937 in This Court.

Paragraph 7. The resignation of trustees who were made such by Trust Deed 10161996, and the appointment of City National as successor trustee; were sought by City National as a volunteer; the active members of Granada bondholders' committee were and are junior officials of City National trust department. They carry out directions from controlling officers of City National. In sober truth the City National appointed itself as successor trustee. The bondholders had no knowledge or control over the change, until the present proceedings in this Court. The bondholders, stockholders and creditors of Granada, have had no independent voice or choice in the matter. Under Illinois law the Superior Court in the foreclosure proceeding had no power to litigate or change title, *Jones v. Horrom*, 363 Ill. 193. An independent litigation with all parties fully notified of such intentions, would be necessary to enable change of record trustee. No such proceeding has been conducted. Such volunteer meddling by City National is no lawful basis to ask for compensation. By its petition here City National shows itself to be no more than a trustee *de son tort*. It is responsible for its acts and failure to act, but has no legal claim for payment for services.

Paragraph 10. City National to this Court now "represents that it held such possession not as an officer of the Superior Court of Cook County, Illinois, and not by virtue of any orders thereof, but as a matter of right and as mortgagee in possession of the said real estate and premises after condition broken, by reason of which its accounting might not have been properly presented to the Court for approval but might be had only by way of accounting between the parties to the action."

And by Paragraph 26:

"Your petitioner avers that under the law of Illinois a mortgagee without any foreclosure proceedings whatsoever may continue in possession and collect the income, and continue so to do until its debt is paid, regardless of how long that may take, and that the sole remedy of the owner of the property is by way of a proceeding in equity to redeem, in which proceeding on tender and payment of the amount due the lien may be discharged and the trustee may be removed from possession."

Whereby respondents here admit that Superior Court in foreclosure suit had no control over revenues of debtor; that all of its orders as to same are void and outside issues of that proceeding. The supposed accounting with parties in interest never occurred; whatever action taken in Superior Court was adversary.

178 Superior Court refused to consider any accounting.

Such matter was outside any issues before the Court. Same is true of all supposed orders to assume or pay any part of receiver's certificate, or to pay upon furniture contract. Redemption has now been made by paramount law. Trust deed trusteeship is tolled and ended.

In case 5488 U. S. C. C. A.—*Harris v. Tuttle*, counsel for City National, then speaking for the Granada Bondholders' Committee say at Page 10:

"It is true that in the case at bar a receiver was originally appointed by the Court (Superior Court, Case 519151 is referred to), and that it was pursuant to Court order that the Receiver surrenders possession to the trustee. However, that order is no way changed the status of the trustees possession once it had obtained it. Its only effect, so far as the trustee is concerned was to furnish it means of obtaining possession without being in contempt of Court by forcible dispossession of the receiver. Thereafter the trustee held the possession with the same right it would have if a receiver had never been appointed."



That theory was sustained by the Supreme Court of the United States in *Harris v. Tuttle*, 297 U. S. 225. That conclusion became the law of the case. Respondents are bound thereto. Such possession as trustee owner carries no right to compensation.

Paragraph 12. As events have occurred and now stand, the language quoted by City National from trust deed does not apply. That document 10161996 was prepared by present counsel of City National for its predecessor; whereby respondents must accept strict construction of Article VI, Section 4, reading thus:

"In case trustee shall have proceeded to exercise or enforce any remedy, right or power under this trust deed, by foreclosure, action at law, entry or otherwise, and such proceeding shall have been discontinued or abandoned because of waiver or for any reason or shall have been determined adversely to trustee, then and in every such case, mortgagor and trustee shall be restored to their respective positions and rights in respect of the mortgaged premises, and all remedies, rights and powers shall be and continue as though no such proceedings had been taken."

Whereby City National and its counsel are precluded by words they have chosen. Respondents have no basis for any claim here. City National entry and possession was discontinued by paramount law. Matters now stand and continue as though no such proceedings had been taken. By said language of trust deed matters revert to *status quo ante*. All right to charge or compensation for City National is tolled.

Paragraph 8. City National failed to require a full accounting from its predecessor, Central Republic Trust Company. City National must now respond for all items chargeable to its predecessor as elsewhere mentioned in this pleading. Duty so to account for all acts and transactions of its predecessors as prior trustees in possession of Granada properties, is shown further by findings and decree in this Court, in equity No. 14189, to which reference is now made for greater certainty. From Cody Trust to City National there was adoption of benefits which carry liability to respond here. Cody Trust Company, Chicago Trust Company, Central Trust Company, Central Republic Trust Company and City National Bank and Trust Company are links in a chain of legal duty which the federal trustee now invokes.

Paragraph 9. There were no objections by anyone to

report of Master in Chancery in the Granada Superior Court case 519151. City National did not oppose claim for Master's fee, but paid same without protest. It should have no credit therefor, the item should be falsified and disallowed. \$2,552.80 should be refunded.

179 Paragraph 11. By Exhibit A (to bank petition August 30, 1937), which is consolidated audit, City National admits it has on hand in Granada general account, \$11.65; in trustee in possession account, \$83.10; in foreclosure decree distribution fund, \$1,507.76. Said consolidated audit fails to mention house fund, \$400.00. These four items total \$1,990.86; admitted to be in the hands of City National as trustee for Granada, on May 17, 1937, and not since disbursed but remaining still in its hands. This consolidated audit was not furnished to your federal trustee until August 25, 1937. On many dates from the time of his appointment May 17, 1937, and including August 27, 1937, your federal trustee made demands upon City National and many of its officers and also upon its counsel of record in this proceeding to deliver and pay over to your federal trustee all remaining moneys or property of debtor estate, but City National and its counsel have steadfastly refused and now refuse to turn over or pay over to this Court any of the items so admitted by said audit to be due. On many occasions your federal trustee has called specific attention of City National and its officers to the language used by this Court and its order May 17, 1937, as follows:

"It Is Further Ordered that the City National Bank & Trust Company as Trustee now in possession of the property of the debtor at 525 Arlington Place, Chicago, Illinois, by virtue of the terms and conditions of the first trust deed on said property; and all of its servants and employees and any and all other persons having possession, custody, and control thereof; shall forthwith and immediately surrender possession, control and custody of the aforesaid real estate, together with all monies now in the possession of said trustee, the City National Bank & Trust Company, received from the operation of the said described property, together with any and all other property or assets of whatsoever kind, nature and description belonging to the debtor herein, now in the possession of the said City National Bank & Trust Company, as Trustee; to the said temporary trustee herein."

On May 18, 1937, the day after your trustee was appointed, and in his absence, City National demanded and

coerced the personnel at Granada Hotel to allow them to take away, and they did carry away and now retain hotel receipts and cash on hand at close of business May 17th, after said order was known to City National and its officers and counsel. Said moneys so wrongfully taken amount to \$1,107.60.

Wherefore, your federal trustee says that City National and its counsel have wrongfully withheld said sums of money in disobedience of said order of this Court and have hindered your federal trustee in the performance of his duties.

Paragraphs 5, 9, 14, 15 and 20. Payment of \$7,500 on receiver certificate was improper, directly contrary to Superior Court order, and contrary to terms of said certificate. The latter provides payment of all taxes for Granada and a reserve of \$8,500 net rents to be in hands of City National, before and request for payment could be considered. City National should not have credit for any part of said \$7,500, entire item should be falsified, disallowed and repaid with reasonable interest.

Paragraphs 21, 22. Against right and authority during 1936 claimant bank say they have withdrawn for itself and counsel, cash from debtor funds as follows:

Counsel fees, furniture litigation (1934).....	\$ 2,000.00
Trustees foreclosure fees.....	1,608.56
Master foreclosure fees.....	2,552.80
Court legal expenses in <i>Harris v. Tuttle</i> .....	167.50
Counsel fees, 77B case in 1935 ( <i>Harris v. Tuttle</i> 297 U. S. 225).....	3,857.79
	<hr/>
	\$10,186.65

All of which items should be falsified, disallowed and repaid together with reasonable interest.

180 Paragraph 23. During the years claimant bank and attorneys were conducting said Superior Court foreclosure case 519151 and were opposing said previous reorganization case (*Harris v. Tuttle*) in this Court, they took to themselves fees against right and authority for management of debtor affairs, out of cash funds of debtor arising from real estate rents received by claimant bank as trustee owner in possession.

During calendar year 1934.....	\$ 2,850.79
1935.....	3,545.48
1936.....	3,535.17
1937 to May.....	1,433.05
	<hr/>

So-called management fees at least.....\$11,364.42

All of which should be falsified, disallowed and repaid together with reasonable interest.

Paragraphs 13 and 16. The admitted arrangement between City National and Cody Trust Company and Edward Hall, is now disclosed of record for the first time. There is no authority for such a business. The bondholders, creditors and your federal trustee were uninformed until City National petition was filed August 30, 1937. The Cody Trust Company and its officers had misrepresented the facts with reference to taxes and with reference to personal property. Persons who bought bonds relying on prospectus were lead to believe all taxes had been paid and all charges against furniture and other real and personal property had been fully released and discharged so that the security for the bonds would be a real first mortgage on all the real and personal property at date of issue of the bonds. This was not true either as to the original bond issue in 1924 nor as to the refinancing in 1928. These facts were fully known to City National and its counsel. Instead of seeking to compel Cody Trust Company and its officers to right that wrong they now admit the use of current revenues of the property to employ a representative of Cody Trust Company to keep its officers fully advised of all acts and doings of the self-appointed trustee City National in its management of the property. This occurs at the same time City National is concealing disposition of the net monthly receipts from the property by removing same to its trust department and then switching the moneys around from one account to another. This deliberate confusion is perpetuated by petition August 30th, filed for the purpose of again delaying the paying over and delivery of moneys and property pertaining to debtor estate, withheld by City National.

Paragraph 21. Contrary to statement made in petition, City National did not take active part upon former 77B case. That case had been fully heard and Judge Lindley had announced his decision, before City National sought to intervene under a special appearance. All that City National did was to file its intervening petition and its special appearance and objections in support thereof in the Trial Court in that case. The real defense of that suit and the only party named as appellant in the United States Circuit Court of Appeals and the Supreme Court of the United States was the Bondholders' Committee. Only the Bondholders' Committee appears in



the petition for appeal, the praecipe for record, the citation, the record and the briefs. In fact, all that City National did was to file a special appearance and petition in the Trial Court after that Court had reached its conclusion. This intervention was purely voluntary. City National was not served with any process. The intervention was wholly unnecessary. The act was not at any time authorized by any creditor or bondholder herein. Any fee charge or expense by City National 181 for such intervention for itself or its counsel is without any right or authority, and the item of charge should be falsified and disallowed, and repaid together with reasonable interest. Only purpose of intervention was to continue City National and its counsel in control of Granada property and its revenues. No advantage was gained for bondholders, creditors or stockholders of Granada.

Paragraph 23. For reasons abundantly stated herein City National is not entitled to charge or receive any fee for services.

Paragraph 24. Your federal trustee believes that the items mentioned here are proper charges and should be paid. Federal trustee was compelled to pay some of said bills (Illinois Bell Telephone Company, to City of Chicago Bureau of Water, and \$25 to City of Chicago for awning permit) to prevent stoppage of services to the hotel. These items were paid only after repeated protest to City National and its counsel, met by their indifference although as herein stated they had ample funds to pay same. City National should pay these bills.

When your federal trustee was appointed, City National asked that he allow them to pro-rate all items as of date of his appointment. This the federal trustee refused to do because same was contrary to language of order under which he was appointed May 17, 1937, which is quoted above. City National by its counsel then orally asked at the bar of the Court permission from Judge Barnes to pay all bills it had incurred covering transactions prior to May 17, 1937. City National submitted some of its bills to federal trustee who consented to payment of same out of funds in City National hands. About June 1, 1937, City National quit paying and has since refused either to perform the order of the Court May 17, 1937, or to carry out its oral undertaking to pay all bills prior to May 17, 1937. This is one more instance of the obstruction and the evasive conduct of City Na-

tional and its officers in dealing with this estate. Your federal trustee recommends that City National be fined in the discretion of the Court for direct contempt and refusal to perform the order of the Court. And also your federal trustee suggests that City National, its Committee and their counsel be denied any compensation for services hereby claimed in these proceedings.

Paragraph 27. Your federal trustee denies that any such contract was made December, 1933, or at any other time, and denies that there was or is any justification for the acts of the City National and its predecessors in failing to collect from Arlington Hotel the regular payment of \$940 or more per month for services rendered. At all times \$1,000 per month was and is a reasonable charge for said services to be paid by the Arlington property, earned and due to debtor estate.

Paragraphs 27 and 28. For the years 1933 to 1937 to August 15th, claimant bank (acting in the dual and conflicting capacity of trustee in possession of Arlington Hotel property, and also of Granada Hotel property—debtor estate) collected only \$600 per month from the Arlington and paid only that much to the Granada, for hot and cold water, heat and refrigeration services, furnished continuously from the engineering plant and equipment of debtor estate: whereas prior to year 1933 for many years, the sum charged and paid was at the rate of \$940 or more per month; by which wrongful reduction and failure of duty by claimant bank, the debtor estate is deprived of at least \$340 additional earned compensation per month, for its services past due as follows:

Year 1933 twelve months .....	\$ 4,080 and interest
1934 same .....	4,080 and interest
1935 same .....	4,080 and interest
1936 same .....	4,080 and interest
1937 seven and one-half...	2,850 and interest

This rental loss to debtor.....\$19,170 or more;  
which should be paid to debtor estate together with reasonable interest.

This loss is directly shown by the fact that under same management by claimant bank, all real estate taxes on the Arlington Hotel are paid to date; while said taxes are listed unpaid against debtor estate since 1928 (page 8 of plan in this Court and paragraph 17 of City National said report and account). Arlington, Inc., also owes for this item.

Paragraph 29. Petitioner bank admits that the tailor who furnished valet service to guests of Granada Hotel and Arlington Hotel during all said period has occupied space for his business only in the Granada Hotel, and that claimant bank collected as rent only a commission on the business done with Granada guests, but at the same time as trustee for both properties, allowed the Arlington to collect, receive and keep from said tailor (without furnishing him any space) sums as follows which truly belong to debtor estate:

Calendar year 1934 .....	\$ 98.74
1935 .....	72.51
1936 .....	56.41
1937 including June .....	18.86

So there would be due debtor estate more than .....\$246.52

That said space was and is worth at least twenty-five dollars per month, one half of which should have been charged to the Arlington, so that for this item City National owes at least \$375. Arlington, Inc., also owes for this item.

Paragraph 30. Neither City National nor its predecessors made any effort to rent or secure any adequate revenue from said street floor space. The zoning ordinance of the City of Chicago is not as stated, but on the contrary, does permit the use of this space for many available or commercial purposes as an operation inside of the hotel. This space can be put to valuable use of various sorts by proper tenantry without any substantial change or remodeling of the interior. This language of City National petition, like that of the conversation of its officers, shows their unqualified failure to make any effort to use or rent this space but they have been indifferent to same.

Paragraph 31. Wherefore, federal trustee says it is plain that claimant bank wholly failed in its duties as such trustee and is not entitled to receive any compensation; but on the contrary should be required to refund all sums it has previously taken to itself or paid to its counsel, and should in addition be required to refund or pay to debtor estate all losses permitted or occasioned by the failure of claimant bank in its duties to debtor estate, in its relation as such voluntary trustee.

Wherefore, federal trustee further asks instructions from this Court as to what additional steps shall be taken by him to recover said moneys for debtor estate, and he prays full

hearing and general relief in this Court against the respondents. Federal trustee asks that:

1. City National Bank and Trust Company, its counsel of record have leave to file such reply as they may be advised to this pleading.

183 2. That City National Bank and Trust Company be held in contempt of the Court for refusing to perform the orders of this Court, above stated.

3. That City National be compelled forthwith to pay over said sum of \$1,990.86, by its audit admitted to be now in its hands, and since May 17, 1937.

4. That the Court order the account of City National to be surcharged and falsified as stated hereinabove, and order City National to file forthwith in this proceeding a true and correct final account, and that City National be ordered to pay over all said sum to debtor estate.

5. That the Court find the amount of loss and damage to the estate by the misconduct of City National, and require it to pay said sum thrice over pursuant to the statute above stated.

6. That proper directions be given to your trustee as need therefor may arise from a full trial.

Respectfully submitted,

Weightstill Woods,

*Federal Trustee.*

State of Illinois, }  
County of Cook. } ss.

Weightstill Woods being sworn states that as part of his duties as Federal Trustee since May 17, 1937, he has made investigation of the matters mentioned in the foregoing pleading, and to the best of his knowledge, information and belief, the same is true and correct.

Weightstill Woods.

Subscribed and sworn to before me this 9th day of September, 1937.

(Seal)

Alexander O. Ramlose,  
*Notary Public Cook County, Illinois.*



186 And afterwards, to wit, on the 14th day of September, A. D. 1937, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

187 IN THE DISTRICT COURT OF THE UNITED STATES.  
\* \* (Caption—65811) \* \*

Tuesday, September 14, A. D. 1937.

Present: The Honorable John P. Barnes, District Judge.

On motion of Solicitors for City National Bank & Trust Company Successor Trustee under First Mortgage It Is Ordered that leave be and the same is hereby given to file amendment to proof of claim. It is further ordered that the objections heretofore filed stand to claim as amended.

Entered  
Sept. 14,  
1937.

188 And on, to wit, the 14th day of September, 1937, came the City Natl. Bank & Trust Co. of Chicago, Successor Trustee, by its attorneys and filed in the Clerk's office of said Court its certain Amendment to Proof of Claim in words and figures following, to wit:

189 IN THE DISTRICT COURT OF THE UNITED STATES.  
\* \* (Caption—65811) \* \*

#### AMENDMENT TO PROOF OF CLAIM OF SUCCESSOR TRUSTEE.

State of Illinois }  
County of Cook } ss.

At Chicago, for the Northern District of Illinois, in the Eastern Division thereof, on the 14th day of September, 1937, came W. E. Toon and made oath and says:

1. That he resides in Oak Park, in the County of Cook and State of Illinois, that he is over twenty-one years of age and is an Assistant Trust Officer of City National Bank and Trust Company of Chicago (hereinafter for convenience called "Claimant"), a banking corporation having its principal office and place of business in the City of Chicago,

Illinois, and as such is duly authorized to make this amendment to the proof of claim heretofore filed by Claimant as successor Trustee under the certain trust indenture from Granada Hotel Corporation, a corporation, the Debtor in the above entitled proceedings, to Chicago Trust Company, as Trustee, dated September 1, 1928, and recorded in 190 the Office of the Recorder of Deeds of Cook County, Illinois, on October 1, 1928, as Document 10161996, on behalf of itself as such successor Trustee and of the holders of bonds and interest coupons appertaining thereto issued and outstanding under said trust indenture.

2. That paragraph 7 of said proof of claim be amended so that said paragraph as so amended be and read as follows:

"7. That no part of said indebtedness has been paid, except that a balance of funds in possession of Claimant as of September 30, 1936, in the amount of One Thousand Six Hundred Eight Dollars and Fifty-six Cents (\$1,608.56) was applied in and by said decree entered on December 18, 1936 in the Superior Court of Cook County, Illinois, to the indebtedness in the sum of Ten Thousand Eight Hundred Forty-nine Dollars and Ninety Cents (\$10,849.90), as set forth in paragraph 5 of this proof of claim for moneys due and owing to Claimant for its own use and benefit.

W. E. Toon.

Subscribed and sworn to before me this 14th day of September, A. D. 1937.

(Seal)

Kirsten Sorensen,  
Notary Public.

My Commission expires November 21, 1938.

191 And afterwards, to wit, on the 14th day of September, A. D. 1937, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

Entered  
Sept. 14,  
1937.

192 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—65811) \* \*

Tuesday, September 14, A. D. 1937.

Present: The Honorable John P. Barnes, District Judge.

On motion of Weighstill Woods Trustee It Is Ordered that leave be, and the same is hereby given him to file instanter petition to determine inter-hotel services. It is further ordered that any party in interest who desires to file answer thereto be and he is hereby ruled to file such answer within 5 days from this date and hearing on said Petition and Answer if any is set for September 21 A. D. 1937 2 P. M.

193 And afterwards, to wit, on the 14th day of September, A. D. 1937, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

194 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—65811) \* \*

Tuesday, September 14, A. D. 1937.

Present: The Honorable John P. Barnes, District Judge.

On motion of Solicitor for the Trustee It Is Ordered that leave be and the same is hereby given the Trustee to file instanter a petition to determine Real Estate Taxes and hearing on said petition is set for September 30, A. D. 1937. It is further ordered that the City National Bank & Trust Company, as Trustee be and it is hereby ruled to file such answer as it may desire to answer and counter claim of Court Trustee to the petition heretofore filed by said City National Bank & Trust Company as Trustee and the hearing thereon is set for September 21, A. D. 1937 at 2:00 P. M.

195 And on, to wit, the 14th day of September, 1937, came Weightstill Woods, Trustee and filed in the Clerk's office of said Court his certain Petition in words and figures following, to wit:

196 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—65811) \* \*

Filed  
Sept. 14,  
1937.

PETITION BY COURT TRUSTEE TO HAVE DETERMINED COMPENSATION FOR SERVICES AS TO ARLINGTON HOTEL.

A. Weightstill Woods by order of this Court entered May 17, 1937, was appointed and now remains the duly qualified and acting federal trustee for estate of debtor in these proceedings.

B. This Court by order July 14th, confirmed a plan of reorganization for the property and affairs of debtor; and by orders, July 14th, 15th, 17th and August 30th, has reserved full power and jurisdiction to hear and determine all matter herewith presented.

C. Your trustee gave notice June 15, 1937 of his intention to prepare and present this petition; as shown by copy attached as Exhibit (1) hereto.

D. This Court by its order July 14th, 1937, in confirming the plan of reorganization among other things decreed as follows:

"There are no contracts of the Debtor which are executory in whole or in part and no unexpired leases which have been rejected or surrendered."

E. Thereafter on July 28, August 13, August 14 and August 16, 1937, correspondence occurred as shown by four letters of which copies are attached as Exhibit (2)-a-b-c-d to this petition.

197 F. Thereafter on September 9, 1937 your Court trustee filed answer and counterclaim to petition of City National Bank and Trust Company for settlement of its accounts, and as part of said answer and counterclaim therein stated to the Court:

"Your federal trustee denies that any such contract was made December, 1933, or at any other time, and denies that there was or is any justification for the acts of the City National and its predecessors in failing to collect from Arlington Hotel the regular payment of \$940 or more per month for services rendered. At all times \$1,000 per month was and is a reasonable charge for said services to be paid by the Arlington property, earned and due to debtor estate.

For the years 1933 to 1937 to August 15th, claimant bank (acting in the dual and conflicting capacity of trustee in



possession of Arlington Hotel property, and also of Granada Hotel property—debtor estate) collected only \$600 per month from the Arlington and paid only that much to the Granada, for hot and cold water, heat and refrigeration services, furnished continuously from the engineering plant and equipment of debtor estate; whereas prior to year 1933 for many years, the sum charged and paid was at the rate of \$940 or more per month; by which wrongful reduction and failure of duty by claimant bank, the debtor estate is deprived of at least \$340 additional earned compensation per month, for its services past due as follows:

Year 1933 twelve months .....	\$4,080 and interest
1934 same .....	4,080 and interest
1935 same .....	4,080 and interest
1936 same .....	4,080 and interest
1937 seven and one-half .....	2,850 and interest

This rental loss to debtor.....\$19,170 or more; which should be paid to debtor estate together with reasonable interest.

This loss is directly shown by the fact that under same management by claimant bank, all real estate taxes on the Arlington Hotel are paid to date; while said taxes are listed unpaid against debtor estate since 1928 (page 8 of plan in this Court and paragraph 17 of City National said report and account). Arlington, Inc., also owes for this item."

Wherefore, your Court Trustee asks:

(1) That Arlington, Inc., be required to answer this petition.

(2) That Arlington, Inc., be required to pay forth-198 with the sum of \$1,000 for one month beginning September 16, 1937, as a condition of the continuance of said heat, hot and cold water and refrigeration services, while this petition is being heard and these matters are being determined by the Court.

(3) That the Court determine and decree what sum is due from Arlington, Inc., for said services to date; and also determine and decree whether said services shall be continued, and if so, what is a reasonable payment monthly to be made by Arlington, Inc., for a continuance of such services as the Court may direct.

Respectfully submitted,

Weightstill Woods,  
Federal Trustee.

State of Illinois }  
County of Cook } ss: .

Weightstill Woods being sworn states that as part of his duties as Federal Trustee since May 17, 1937, he has made investigation of the matters mentioned in the foregoing pleading, and to the best of his knowledge, information and belief, the same is true and correct.

Weightstill Woods.

Subscribed and sworn to before me this 14th day of September, A. D., 1937.

(Seal) Anita E. Malkin,  
Notary Public, Cook County, Illinois.

199 EXHIBIT 1 TO PETITION BY COURT  
TRUSTEE.

IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* (Caption—65811.) \* \*

Notice to:

City National Bank and Trust Company Individually  
and as Trustee,  
Bondholders Committee for Arlington Hotel Property,  
Bondholders Committee for Granada Hotel Property,  
Defrees, Buckingham, Jones and Hoffman, Their Attorneys:

The undersigned Trustee advises all concerned that he is collecting, accounting and engineering data in regard to what are known as "Inter Hotel Accounts," including charges that have been or should be made for services and facilities rendered and furnished at any time by the Granada Hotel Property and its Management to the Arlington Hotel Property (530 Arlington Place): that when such data is in hand in suitable form, the undersigned Trustee will report the same to this Court for directions and orders as to appropriate action thereon to be taken by the undersigned Trustee.

In due course you will receive copy of such report, together with notice of time and place when application will be made thereon to the Court for instructions to be undersigned.

Present notice is supplemental to the demand in writing  
made upon you June First 1937. June 15, 1937.

Respectfully yours,  
Weightstill Woods,  
*Temporary Trustee.*

Received copy of Foregoing Notice this June 15, 1937.  
City National Bank and Trust Company  
individually and as Trustee,  
Bondholders Committee for Arlington  
Hotel Property,  
Bondholders Committee for Granada  
Hotel Property,  
Defrees, Buckingham, Jones and  
Hoffman,

*Their Attorneys.*  
By Vincent O'Brien.

200 EXHIBIT 2-A TO PETITION BY COURT  
TRUSTEE.

Granada USDC 65811

July 28, 1937

City National Bank  
and Trust Company,  
Mr. Arthur T. Leonard  
Trust Department

Dear Mr. Leonard:

Supplementing correspondence and conference with  
your attorneys Defrees, Buckingham, Jones and Hoffman,  
and with personnel of your Trust Department during the  
past two months, add with reference to one of the items  
of your account discussed with you and Mr. O'Brien at  
your office this morning, I am writing to affirm my view  
and decision that the payments made for the past five  
years by the hotel Arlington property and management to  
the Granada property and management, for the services  
rendered and performed by Granada to the Arlington, are  
entirely inadequate and too low to be classed as reason-  
able compensation.

With your desire that sundry items of your account  
shall be passed upon speedily by the Court I shall cooper-  
ate.

However until a court decision has been obtained, I

must ask that the Arlington management pay per month on account, the sum of one thousand dollars due monthly in advance, for my continuation of such services. The payment for July is past due and should be made immediately; and payment for August should follow next week. If such payment is not made I shall so report to the Court, and will recommend that all services to the Arlington be cut off for nonpayment.

A copy of this letter is being mailed to your Attorneys.

Sincerely,

Weightstill Woods,  
Federal Trustee.

201 EXHIBIT 2-B TO PETITION BY COURT  
TRUSTEE.

THE ARLINGTON, INC.  
Second Floor  
208 So. LaSalle St.  
Chicago

August 13, 1937.

Weightstill Woods, Esq.,  
77 West Washington Street,  
Chicago, Illinois.

Re: Granada Apartments, Inc.

Dear Mr. Woods:—

Your letter directed to the City National Bank and Trust Company requesting that the Arlington pay \$1,000 per month on account for heat, water, refrigeration, etc., has been referred to the undersigned.

Careful investigation indicates to us that the amount presently being paid is more than adequate. We understand however, that you believe it is not and that the matter will ultimately have to be determined by the court. Pending such determination we do not believe that the amount should be increased.

Very truly yours,

The Arlington, Inc.

By (W. G. Sturm)

W. G. Sturm,

Vice President.

WGS:MG



202 EXHIBIT 2-C TO PETITION BY COURT  
TRUSTEE.

August 14, 1937.

City National Bank and  
Trust Company of Chicago  
Mr. Arthur T. Leonard  
Trust Department.

Granada USDC 65811

Dear Mr. Leonard:

Until now I have been waiting for you to answer my letter to you dated July 28: Maybe you deem it unimportant. Also you have failed to make the payments therein requested. You are not available on the telephone today, and your Attorney Mr. Vincent O'Brien is absent until Monday, but your trust officer Mr. W. G. Sturm informs me today that you have organized within the last few days a new corporation called The Arlington Company, to own the Arlington property.

This situation presents an appropriate time for action. Herewith is returned your check for \$600 received yesterday. The amount is not satisfactory; I have given directions that all services from the Granada to the Arlington property, be cut-off on Monday August 16 at noon. The cold water circulation will be continued a short time to enable you to complete the connection you have been at work upon direct with the city water main. When that connection is made, please notify me of that fact.

Below is appended final bill to date on this item of account.

Sincerely,

Weightstill Woods,  
*Federal Trustee.*

City National Bank and Trust Company Individually and  
as Trustee for Arlington Hotel property 530 West  
Arlington Place In account with

Granada Apartment Inc USDC 65811

Arrears for water heat and refrigeration to  
date August 15 .....\$20,000\*\*\*

203 EXHIBIT 2-D TO PETITION BY COURT  
TRUSTEE.

August 16, 1937

Mr. Weightstill Woods,  
Trustee in Bankruptcy of  
Granada Apartments, Inc.,  
77 West Washington Street,  
Chicago, Illinois.

Dear Mr. Woods:

Upon receipt of your letter of August 14, 1937, directed to City National Bank and Trust Company of Chicago, attention of Arthur T. Leonard, Trust Department, that all services from the Granada to the Arlington property will be cut off at noon on Monday, August 16th, we discussed the matter with Mr. Vincent O'Brien, of Defrees, Buckingham, Jones & Hoffman.

Pursuant to your conversation with him, we are enclosing herewith check in the sum of \$1,000 on account of heat, water, hot water and refrigeration, the proceeds of which are paid by us and received by you without prejudice and on the understanding that no further payment will be required prior to September 15, 1937, and that on that date, or as early thereafter as convenient, the precise amount payable for the service used is to be determined by Judge Barnes.

Very truly yours,

The Arlington, Inc.

By (W. G. Sturm)

*Vice President.*

Received the above mentioned check for \$1,000, upon the conditions above set forth.

(Weightstill Woods)

*Trustee.*

(EXHIBIT 2-C to petition by Court Trustee—August 16, 1937. Not copied.)

204 EXHIBIT 2-C TO PETITION BY COURT  
TRUSTEE.

Weightstill Woods  
Attorney and Counselor  
77 W. Washington St.  
Chicago

August 16, 1937

City National Bank and Trust Company  
individually and as Trustee.  
The Arlington Inc.  
208 South LaSalle  
Chicago, Illinois.

Attention Messrs Leonard and Sturm

In Account With  
Granada Apartments Inc.  
USDC Chicago No. 65811

To arrears for water, heat and refrigeration service, per letter August 14, 1937	\$20,000****
Charge for said services for month ending September 15, 1937	1,000****
Received on account without prejudice, check 1369 dated August 16, 1937	1,000*****
Balance due Granada for water, heat and Refrigeration	\$20,000*****

208 And on, to wit, the 14th day of September, 1937, came Defrees, Buckingham, Jones & Hoffman, Counsel for Bondholders' Protective Committee, and filed in the Clerk's office of said Court their certain Petition for allowance of Fees in words and figures following, to wit:

209 IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Caption—65811) • •

Filed  
Sept. 14,  
1937.

**PETITION OF DEFREES, BUCKINGHAM, JONES &  
HOFFMAN FOR ALLOWANCE OF COUNSEL  
FEES.**

Now comes Defrees, Buckingham, Jones & Hoffman, of Chicago, Illinois (hereinafter called the "Petitioner"), and respectfully represents:

1. That Petitioner is counsel for Charles S. Tuttle, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, presently constituting the Bondholders' Protective Committee (hereinafter called the "Committee"), acting under and pursuant to the certain Deposit Agreement dated April 25, 1933.

2. That there are now on deposit with said Committee Three Hundred Thirty-one Thousand Six Hundred Dollars (\$331,600) principal amount of First Mortgage Six Per Cent Real Estate Gold Bonds dated September 1, 1928, issued by Granada Building Corporation, a corporation, and secured by Trust Deed dated September 1, 1928, to Chicago Trust Company, a corporation, as Trustee, and recorded in the Recorder's Office of Cook County, Illinois, on October 1, 1928, as Document No. 10161996, the said Trust Deed covering the property owned by the Debtor herein.

3. That in accordance with its representation of 210 said Committee, Petitioner has devoted much time and effort to matters requiring the advice of counsel arising from time to time in connection with the activities of the Committee and its participation in these proceedings for the reorganization of Debtor; and that attached hereto as Exhibit "A", and by this reference thereto incorporated herein is a description of the nature of the legal services heretofore rendered in this cause by Petitioner.

4. That in addition to the services already rendered, Petitioner necessarily will perform other services prior to the consummation of the Plan of Reorganization which, from experience of Petitioner in other proceedings under Section 77B of the Bankruptcy Act, as amended, will involve the spending of considerable time and effort with respect thereto, the nature of such services being in general as follows:



(a) Services to be rendered in connection with the final draft of the Voting Trust Agreement provided for in the Plan of Reorganization and the obtaining of the approval by the Court of the form thereof and in connection with the execution and delivery thereof by the parties thereto;

(b) Services to be rendered in connection with the preparation of the Participation Certificates to be issued pursuant to said Voting Trust Agreement and matters arising in connection with the issuance and distribution thereof;

(c) Services in connection with the preparation of the Certificate of Incorporation and By-laws of the Reorganized Company provided for in the Plan of Reorganization, and obtaining the approval of the form thereof by the Court;

(d) Services to be rendered in connection with the preparation of corporate minutes of directors' and stockholders' meetings with respect to the organization of said Reorganized Company.

(e) Services to be rendered in connection with the preparation of the instrument of release of the Trust Deed securing the First Mortgage Six Per Cent Real Estate Gold Bonds and of the Trust Deed securing the Second Mortgage Six Per Cent Real Estate Gold Bonds of Debtor, the obtaining of the approval by the Court of the forms thereof and in connection with the execution and recording thereof and in connection with the preparation and execution of the instrument of satisfaction of the foreclosure decree with respect to the First Mortgage Six Per Cent Real Estate Gold Bonds of the Debtor and in connection with the preparation of the instrument of release of the Chattel Mortgage of Debtor;

(f) Services to be rendered in connection with the obtaining of a loan, if necessary, in connection with the new financing as provided for in the Plan of Reorganization and in connection with the elimination of any objections to the title to the property of said Reorganized Company acquired through these reorganization proceedings; and

(g) Services in connection with the preparation and entry of a final decree in these proceedings.

5. That Petitioner has not received any compensation for services rendered in these proceedings.

6. That the services rendered and to be rendered for

which compensation is requested were and are to be performed on behalf of the said Committee and not on behalf of any other person or persons.

7. This application is made pursuant to Section 77B of the Bankruptcy Act, as amended.

Wherefore, your Petitioner prays that an order be entered herein allowing your Petitioner as a cost of administration in these proceedings reasonable compensation for services rendered and to be rendered in these proceedings.

Defrees, Buckingham, Jones & Hoffman,  
By Vincent O'Brien,  
*A Partner.*

212 State of Illinois, }  
County of Cook. } ss.

Vincent O'Brien, being first duly sworn, on oath deposes and says that he is a partner in the firm of Defrees, Buckingham, Jones & Hoffman, the Petitioner herein; that he has read the foregoing petition by him subscribed for and on behalf of said Petitioner; and that he knows the contents thereof and that the same is true.

Vincent O'Brien.

Subscribed and sworn to before me this 13th day of September, A. D. 1937.

(Seal)

Kirsten Sorensen,  
*Notary Public.*

213 IN THE DISTRICT COURT OF THE UNITED STATES.  
• • (Caption—65811) • •

**AFFIDAVIT.**

State of Illinois, }  
County of Cook. } ss.

Vincent O'Brien, being first duly sworn, deposes and says that he is a duly licensed and practicing attorney in the City of Chicago, County of Cook and District aforesaid.

Affiant further states that he is a member of Defrees, Buckingham, Jones & Hoffman, the Petitioner herein; that said Defrees, Buckingham, Jones & Hoffman has

made no agreement, directly or indirectly, and that no understanding exists, for a division of fees between the applicant and the Receiver, Trustee, Bankrupt, Debtor, the attorney of any of them, or any one else, and this affidavit is made pursuant to the rules of the Supreme Court and pursuant to the rules of this Honorable Court. Further affiant sayeth not.

Vincent O'Brien.

Subscribed and sworn to before me this 13th day of September, A. D. 1937.

(Seal)

Kirsten Sorensen,  
Notary Public.

214

### EXHIBIT "A."

Services Rendered by Defrees, Buckingham, Jones & Hoffman, Counsel for Bondholders Protective Committee in Connection With Proceedings for Reorganization of Granada Apartments, Inc., a corporation.

(a) Preparation of the following:

Resolutions of the Committee relating to the adoption of the Plan of Reorganization of the Debtor;

Petition of Committee for leave to intervene in these proceedings to file Plan of Reorganization of Debtor and to submit Plan of Reorganization of Debtor to creditors and stockholders of Debtor;

Plan of Reorganization of Debtor;

Order authorizing filing and submission of Plan of Reorganization to creditors and stockholders; classifying claims of creditors; fixing time and manner in which to file objections to Plan of Reorganization; fixing time and manner of filing acceptances to Plan of Reorganization; fixing time and manner of filing claims; fixing time and manner of filing objections to claims; fixing time and place for proposal by the Committee of the Plan of Reorganization and hearing thereon; fixing time and manner for giving notice to creditors and stockholders of Debtor of the above matters; and including in said order form of notice to creditors and stockholders and form of acceptance of Plan of Reorganization;

Petition of Committee to set certain conflicting claims for hearing before the Court;

Proof of claim of Committee with respect to First Mortgage Six Per Cent Real Estate Gold Bonds deposited with it;

Acceptance of Plan of Reorganization with respect to First Mortgage Six Per Cent Real Estate Gold Bonds on deposit with Committee with respect of which no dissents were filed;

Order with respect to allowance or disallowance of claims against Debtor filed in these proceedings;

Preliminary draft of Voting Trust Agreement provided for in the Plan of Reorganization; and

215 Order of confirmation of Plan of Reorganization, including in said order amendments to the Plan of Reorganization, various provisions as to the manner of consummating said Plan of Reorganization and for filing petitions for fees and expenses herein and providing for time and place of hearing with respect to said petitions and other matters germane to these proceedings not then determined;

(b) Appearances before the Court in connection with the entry of orders set forth in paragraph (a) and appearances in Court in connection with the approval of the original petitions filed herein and the appointment of the temporary Trustee and the hearing with respect to the making of such appointment of the Trustee permanent and in connection with several motions made in these proceedings;

(c) Appearances before Referee Carl H. Chindblom in connection with claims against Debtor filed herein and objections filed thereto by the Trustee in these proceedings;

(d) Conferences and correspondence with Committee, Trustee in these proceedings and attorneys representing various interests relating to matters set forth in paragraphs (a), (b) and (c) above.

(e) Examination of various documents in connection with the reorganization of Debtor, including examination of original petitions and answers thereto filed herein and the order approving said petitions and appointing temporary Trustee in these proceedings and the examination of claims against Debtor filed with the Special Master herein and the Special Master's report thereon and of the consents to the Plan of Reorganization filed with the Special Master and the report of the Special Master thereon; and

(f) Examination of law in connection with various matters arising from time to time in these proceedings.



Filed  
Sept. 14,  
1937.

216 And on, to wit, the 14th day of September, 1937, came the Committee for the Protection of Holders of First Mortgage Bonds, by its attorneys and filed in the Clerk's office of said Court its certain Petition in words and figures following, to wit:

217 IN THE DISTRICT COURT OF THE UNITED STATES.

\* \* \* (Caption-65811) \* \* \*

Petition for Fees and Expenses of the Committee for the Protection of the Holders of First Mortgage Bonds.

To the Honorable John P. Barnes, one of the Judges of said Court:

Your Petitioners, Charles S. Tuttle, Albert J. Peterson, Lewis W. Riddle, William G. Sturm and E. A. Kilmer, respectfully represent:

1. That Petitioners presently constitute the Protective Committee (hereinafter called "Committee") acting under the Deposit Agreement dated April 25, 1933 with respect to the First Mortgage Six Per Cent Real Estate Gold Bonds dated September 1, 1928 issued by Granada Building Corporation, a corporation, to Chicago Trust Company, a corporation, as Trustee.

2. That the original principal amount of said First Mortgage Bonds secured by said Trust Deed was Five Hundred Twenty-five Thousand Dollars (\$525,000), that the first default in the payment of said First Mortgage Bonds occurred on March 1, 1932 and that at the time of said first default there were unpaid and outstanding said First Mortgage Bonds in the principal amount of Five 218 Hundred Ten Thousand Dollars (\$510,000).

3. That by reason of said default and of subsequent defaults in the payment of the principal of, and interest on, the First Mortgage Bonds, a Committee was organized after said defaults for the protection of the holders of the said First Mortgage Bonds under the certain Deposit Agreement dated April 25, 1933 and that your Petitioners are the present members of the Committee acting under said Deposit Agreement.

4. That the Committee caused the said Deposit Agreement to be prepared and after its organization it caused letters of transmittal to be sent to bondholders in depositing said First Mortgage Bonds; that there were approximately 550 holders of said First Mortgage Bonds scat-

tered through Illinois and other States; that the Committee received from bondholders the deposit of a substantial amount of First Mortgage Bonds, the deposited First Mortgage Bonds now aggregating Three Hundred Thirty-one Thousand Six Hundred Dollars (\$331,600) principal amount thereof, and to evidence the deposit of such First Mortgage Bonds the Committee prepared and caused to be issued to depositors Certificates of Deposit in the form prescribed in and by the Deposit Agreement.

5. That the Committee caused a survey of the mortgaged property to be made in respect to its physical condition, occupancy, income and value, and that it also made surveys in respect of the general taxes and special assessments against the mortgaged property and insurance, and the situation with respect to the equipment, and 219 fixtures in said property; that the Committee gave consideration to the amount and nature of the defaults under the said Trust Deed securing said First Mortgage Bonds to ascertain whether said defaults could or would be cured so as to make foreclosure proceedings unnecessary, and determined that they could not and would not be so cured, and that accordingly it approved the cross-complaint filed by Central Republic Trust Company, a corporation, as Successor Trustee under said Trust Deed, filed in the Superior Court of Cook County, Illinois, in cause No. 519151, to foreclose the lien of the Trust Deed securing the Bonds and furnished said Successor Trustee indemnity in respect of such action; that thereafter the Committee made further studies of the property to determine whether a reorganization of the property could then be effected; that the Committee's efforts to develop a Plan of Reorganization were unsuccessful, primarily because of lack of funds with which to finance a foreclosure sale; that after the filing of the petition herein the Committee, in cooperation and after conferences with the Debtor and with the representatives of others interested in these proceedings and in the property of Debtor, formulated the Plan of Reorganization proposed herein and secured its confirmation by the Court herein; that in connection with the formulation of the Plan of Reorganization and with the proceedings herein the Committee, its agents, representatives and counsel held many conferences with representatives and counsel of the Debtor and with holders of certain claims against the Debtor, and the Committee has taken the leading part in the reorganization sought to be effected herein.

220 6. That by reason of the relationship between the Committee and the depositors constituted by the deposit of First Mortgage Bonds under the Deposit Agreement, the use of the facilities furnished by the Committee, the keeping by the Committee of a record of the names and addresses of the holders of the First Mortgage Bonds, and the resulting unification of the interests of widely scattered holders of deposited First Mortgage Bonds, the Committee provided the means and was enabled to prepare, propose and make possible the confirmation of the Plan of Reorganization filed by it herein. The deposit of the said First Mortgage Bonds resulted in a consolidation of the ownership and control of the Bonds which greatly aided and simplified these proceedings by making it possible for the Committee to file one proof of claim with respect to all deposited First Mortgage Bonds and one acceptance of the Plan of Reorganization with respect to all deposited First Mortgage Bonds to which dissents from the Plan of Reorganization were not filed with the Committee. This made it possible to obtain the consent of holders of two-thirds in amount of said First Mortgage Bonds in much less time and with much less effort than would have been required had it been necessary to obtain the individual affirmative consents of the holders of deposited First Mortgage Bonds. The fact that the Plan of Reorganization was approved and recommended by the Committee aided materially in securing the necessary consents to the Plan of Reorganization, as is apparent from the fact that practically all depositors accepted the Committee's recommendation in this case.

221 7. That the Deposit Agreement hereinabove referred to provides that the Committee shall be entitled to be reimbursed for all disbursements, expenses and liabilities made or incurred by it or by its agents on its behalf in exercising any powers and performing any duties therein vested in the Committee, and shall be entitled to hold and to resort to the deposited First Mortgage Bonds and coupons for such expenses, including the compensation and expenses of the Depositary and of such attorneys, engineers, accountants, appraisers, superintendents, laborers, agents and employees as the Committee might employ and for any and all disbursements made and indebtedness or liabilities incurred by the Committee.

8. That the said Committee has incurred certain expenses and obligations for the use of the facilities and personnel of City National Bank and Trust Company of



Chicago, and that such expenses so incurred are expenses of reorganization under the provisions of Section 77B of the Bankruptcy Act, and are subject to the approval of the Court. The "out of pocket" expenses of the Committee are listed in the schedule attached hereto, marked Exhibit A and made a part hereof.

9. That during the year 1932 City National Bank and Trust Company of Chicago formed a special organization composed of men who were experienced in managing real estate properties and were familiar with real estate bond issues and reorganizations, and rented space outside the banking quarters for the use of this organization; that the salaries of the men in this organization, together with the rent, light, postage and other incidentals expenses incurred in carrying on the work of this organization, were allocated to the various committees constituted for the protection of the holders of defaulted issues of First Mortgage Bonds; that it was the intention and understanding of the officers of said Company in charge of this work that the expenses of this special organization would be charged against the committees as an expense in the same manner as the expenses of the Depositary and all other expenses incurred by the committees.

That since the formation of the Committee with respect to the First Mortgage Bonds of Debtor City National Bank and Trust Company of Chicago has been furnishing the facilities necessary to carry on this reorganization work, including personnel, office space, light and all of the incidental facilities for which it has expended thousands of dollars; that City National Bank and Trust Company of Chicago found it expedient to employ the services of certain of your Petitioners, who were serving without personal compensation as members of the Committee; that certain of your Petitioners were so retained and were so employed, not as members of any committee, but as employees or officers devoting their time to the Reorganization Division of City National Bank and Trust Company of Chicago.

10. That the Committee retained City National Bank and Trust Company of Chicago to render services as Depositary of the Committee in this and in some other instances; that it was believed, and subsequent experiences show, that by retaining City National Bank and Trust Company of Chicago in these various capacities it was possible to procure such necessary services more economi-



early than if those services had been rendered by separate institutions or organizations, and that the Committee desired to keep the cost of reorganization at the lowest possible figure.

That the services performed and to be performed by City National Bank and Trust Company of Chicago, as Depository, consist in part of the following:

The acceptance of Bonds over the counter and through the mail.

The examination of Bonds as to negotiability and coupons, their genuineness and acceptability for deposit and of any instructions accompanying deposited Bonds and coupons.

The communication with bondholders relative to missing coupons and registered Bonds, transmittal letters and manner of registering Certificates of Deposit. Also, examination of legal documents supporting deposits of executors, trustees and other fiduciaries. Reporting deposits and transfers of Certificates of Deposit to Secretary of Committee.

The recording of all Bonds and coupons accepted for deposit upon the deposit record together with the names and addresses of depositors and, after the issuance of Certificates of Deposit, the checking of Certificates of Deposit and the mailing thereof by the Depository or the delivery thereof over the counter. From the deposit record the Depository sets up and maintains ledger accounts for Certificates of Deposit.

The delivery of new securities to depositors upon surrender of Certificates of Deposit and also undeposited securities involving frequent consultation and correspondence with holders of such Certificates and securities by reason of request for issuance of new securities in names of others than the depositors or holders of such undeposited securities occasioned by the appointment of an executor or administrator and trustee and other fiduciaries or otherwise, involving examination of legal documents.

The handling of the actual transfer with the transfer agent or company issuing the new securities.

The closing out of depositors' accounts at such time when new securities are delivered and Certificates presented to it for cancellation.

The custody of new securities and the maintenance of records until all Certificates of Deposit are surrendered. These duties may continue a number of years. Also, correspondence with bondholders for an undetermined

length of time, who still look to the Depositary as the source of information regardless of whether the new securities are in their possession and issued by some one other than the Depositary.

that there have been deposited with the Depositary Three Hundred Thirty-one Thousand Six Hundred Dollars (\$331,600) in principal amount of Bonds; and that City

National Bank and Trust Company of Chicago will continue to act as such Depositary until such time as its duties under said Deposit Agreement and Plan of Reorganization have been fully complied with.

11. That the services rendered by the Reorganization Division of City National Bank and Trust Company of Chicago at the instance of your Petitioners have consisted, among other things, of the following:

Maintaining a personnel capable of handling the problems involved in this reorganization, including persons familiar with the management of the property involved in this reorganization and familiar with this Bond issue and the problems involved in the reorganization of this Bond issue, and the stenographic and clerical help necessary to carry on this work; negotiating with the owners of the property, and other interested parties; preparing Certificates of Deposit, transmittal letters, letters to bondholders, and other instruments; answering numerous inquiries from bondholders and attorneys and others interested in the mortgaged property; spending considerable time with such persons who called at the office of the Reorganization Division and who were interested to determine what was being done with reference to the operation and reorganization of the property; examining various audited reports and surveys with reference to the operation of the mortgaged property; advising those in charge of such operations; preparing the list of bondholders; tracing sales and transfers of Bonds and securing the names and addresses of the new holders thereof; keeping the minutes of the various meetings of your Petitioners; mailing certain letters and communications, including the Plan of Reorganization, to the bondholders pursuant to the orders of this Court; obtaining the required number of acceptances of the Plan of Reorganization confirmed in this proceeding and filing acceptances on behalf of the holders of Bonds in this proceeding; making necessary surveys and valuations in connection with the property; and in general furnishing all of the facilities and personnel required by your Petitioners in carrying out their

work of reorganization this property and protecting the interest of the holders of the Bonds.

That the personnel of the said Reorganization Division so retained by your Petitioners consisted of the following during the greater portion of the period from 1932 to date:

226 Four or five men continually interviewing and corresponding with the bondholders; three men handling the work of the Secretary of the Committee, including keeping the minutes of the various meetings and other records; supervising all mailings, and generally coordinating the reorganization work; three or four men in the legal division rendering general advisory services; three men negotiating with various persons interested in the properties, preparing necessary statistical information and formulating the Plan of Reorganization; two men generally supervising the entire work of the Reorganization Division, and two men devoting part of their time, one in an advisory capacity with reference to the problems of managing the various properties and the other generally supervising the entire services rendered by your Petitioners; that in addition there are seven stenographers and two clerks; and that the personnel as stated above consists of twenty-five persons devoting full time to this work and two persons devoting part time.

That there has also been made available to your Petitioners the use of the general filing division, bookkeeping and auditing division of City National Bank and Trust Company of Chicago, and in addition certain other services, such as messenger, police and information services, tax and insurance services, and appraisal and survey services.

That some of the matters to which your Petitioners so gave attention were also handled by the Trustee under the First Mortgage. Nevertheless, it was essential that your Petitioners be fully advised of the facts and inquire into each separate matter, because in respect of the depositing bondholders they occupied a separate legal status and were under a separate obligation.

That as a result of the formation of the First Mortgage Bondholders' Committee, and because of the machinery available to it as such, and because of its knowledge of  
227 the problems presented, gained over a period of more than four years, it was enabled to formulate the Plan of Reorganization approved in this proceeding and to procure the assents essential to the confirmation thereof.

12. That your Petitioners as such Committee have become and are liable to pay for the services so procured and that said payment will include compensation for all services necessary to be rendered hereafter on the part of the Committee to consummate the reorganization herein approved.

Wherefore, Petitioners pray that an order be entered allowing to your Petitioners such amounts as may be found reasonable for the payment of expenses incurred by Petitioners to City National Bank and Trust Company of Chicago for services rendered and personnel and facilities furnished to the Committee, for services rendered as Depository and for the reimbursement of "out of pocket" expenses of your Petitioners as shown by Exhibit A hereto attached.

Charles S. Tuttle,  
Albert J. Peterson,  
Lewis W. Riddle,  
William G. Sturm,  
E. A. Kilmer,

as a Committee as aforesaid,  
By W. G. Sturm.

Defrees, Buckingham, Jones & Hoffman,  
*Their Attorneys.*

State of Illinois, }  
County of Cook. } ss.

W. G. Sturm, being first duly sworn, on oath deposes and says that he is a member of the above Committee and its duly authorized agent in this behalf; that he has read the above and foregoing petition, knows the contents thereof and that the allegations therein contained are true to the best of his knowledge, information and belief.

W. G. Sturm.

Subscribed and sworn to before me this 13th day of September, A. D. 1937.

(Seal)

Bethel W. Peterson,  
*Notary Public.*



*Exhibit A.*

229

Expenses Incurred by Bondholders'  
Committee Acting on Behalf of Holders  
of

## THE GRANADA

First Mortgage Six Per Cent Real Estate  
Gold Bonds Dated September 1, 1928.

## Printing

TO—The Twentieth Century Press, for Printing 100 copies of the Deposit Agreement .....	\$ 83.50	
TO—McCormick and Henderson, Inc., Call Letters, Letters of Transmittal, and Certificates of Deposit .....	131.20	
TO—Gunthorp-Warren Printing Company—50 Briefs C. S. Tuttle, et al., vs. Sam Harris, et al. ....	21.75	
TO—Gunthorp-Warren Printing Company—50 copies of Supplemental Brief .....	9.25	
TO—Gunthorp-Warren Printing Company—Printing Appeal .....	89.33	\$ 334.83

## Mailing Expense

Envelopes for 6-8-37 Mailing .....	3.93	
Mailing Certificates of Deposit to Depositors by registered mail .....	77.70	81.63

## Miscellaneous

Federal Revenue Tax on Deposited Bonds .....	145.80	
Telephone and Telegrams .....	15.90	
Binder for Duplicate Certificates of Deposit .....	3.80	
Rubber Stamp .....	3.15	
Certified Copy of Orders .....	9.00	
Chicago Title and Trust Company, Examination of title to include 8-4-33 .....	\$257.00	
Refund .....	25.70	231.30

Certified Copy of Petition .....	4.50	
Publication .....	17.55	
Appearance Fee .....	5.00	
Frederick G. Campbell, Clerk of U. S. Dist. Court of Appeals Estimated cost of printing the record together with clerk's fees .....	175.00	
Court Costs re: Appeal .....	25.00	
Transcript of Record .....	7.00	
Appeal Bond Premium .....	10.00	

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Forwarded .....		\$ 416.46
Filing Petition, Supreme Court .....	30.00	
Clerk of The United States Supreme Court—Printing record .....	230.00	
Oman and Lillienthal, Inspection of and preparation of Appraisal and Analytical Report .....	150.00	
Pam & Hurd, Attorneys, for legal services rendered incident to procuring resignation of Central Republic Company as Depositary, and appointment of City National Bank and Trust Company of Chicago as Successor Depositary .....	50.00	
E. A. Kilmer—Expenses in connection with attending meetings .....	15.10	
Marshal's fees .....	17.10	
Attorneys' expense re Trips to Danville, Illinois .....	29.28	
Court Reporter .....	366.30	
Goldstein & Company, Certified Public Accountants, for preparing Statement of Receipts and Disbursements for period 3-22-34 to 5-1-37 and Statement of Profit and Loss (Accrual Basis) for year ended April 30, 1937 .....	50.00	
Interest at 6% per annum to 9-13-37 on funds borrowed by the Committee .....	277.97	1,868.75

Total to 9-13-37 .....

\$2,285.21

231 And on, to wit, the 18th day of September, 1937, came the City Natl. Bank & Trust Co. of Chicago, as Trustee, by its attorneys and filed in the Clerk's office of said Court its certain Answer in words and figures following, to wit:

Filed  
Sept. 18,  
1937.

232 IN THE DISTRICT COURT OF THE UNITED STATES.  
\* \* (Caption—65811) \* \*

**ANSWER OF CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE, TO THE COUNTERCLAIM OF WEIGHTSTILL WOODS, TRUSTEE IN BANKRUPTCY.**

Now comes City National Bank and Trust Company of Chicago, a corporation, as Trustee, and pursuant to order of court entered herein September 14, 1937. files this its answer to the counterclaim of Weightstill Woods as Trustee in Bankruptcy, and says:

1. That it adopts each and every the averments contained in its report and account heretofore filed herein with the same effect as though the same were herein set forth in *haec verba*.

2. That it does not appear in or from the said counterclaim and the affidavit of Weightstill Woods in support thereof that the said Weightstill Woods has made due investigation of the matters and things stated and charged in his said counterclaim and accompanying answer and objections.

3. As to the matters and things averred in Section D of the said counterclaim this respondent denies that it and its counsel sought to serve conflicting interests and to act in opposite capacities; avers that at the time of the entry of the said decree and for a long time prior thereto 333 Granada Apartments, Inc., was the owner of the property in said decree described and not Granada Hotel Corporation, and as to the remainder of the averments in said Section D contained states that they constitute conclusions of law, answer to which is not required here.

4. It denies the allegations of Section E of said counterclaim and states that at all times during the period of its custody and possession it operated the said property with reasonable skill and ordinary diligence, put it and kept it in a state of repair, collected the rents, issues, income and

profits; and used them at all times to the best advantage of the bondholders. As to the period of its possession and as to the averments in respect of the renting of lobby space, it particularly refers to its report heretofore filed. During the period of its possession it kept proper books of account and it avers that it was under no duty to keep all of its records at the hotel premises. The records are those of this respondent as trustee in possession, and not those of the debtor company. It also kept, and there are available vouchers as set forth in its said report. The account of Central Republic Trust Company, its predecessor in trust, was made to and approved by the Court in said foreclosure proceedings. It denies that by reason of any of its acts the debtor has suffered loss and damage. As to the statutes relating to "waste" and the penalties therefor, it avers: (1) that obviously the acts complained of do not constitute waste within the meaning of the law; (2) that during all the period of its operation the debtor company was a resident of Chicago, Illinois, was entirely familiar with the mode and method of operation and made no suggestions or complaints in respect of the matters and things mentioned by the Trustee, and is accordingly for that reason estopped, as is the Trustee in Bankruptcy, from complaining of such matters and things as well as for the reasons set forth in this respondent's report; (3) that the statutes in said Section E mentioned do not now constitute part of the law of Illinois nor did they at any time since the making of your respondent's trust deed; (4) that the said statutes are penal in nature and unenforceable in equity, and enforceable in any event only in a plenary and not in a summary action.

5. As to the averments contained in Section F of said counterclaim, this respondent states that it was appointed Successor Trustee by decree of the Superior Court of Cook County, Illinois and not by itself, as averred in said counterclaim. It denies that the bondholders had no knowledge or control over the change, and avers that the stockholders and creditors of Granada Apartments, Inc., were unnecessary parties to such proceeding and were entitled to no voice in the matter. It further avers that the Superior Court of Cook County, Illinois in said proceeding had jurisdiction of the parties and of the subject matter, and that its decree is free from collateral attack by anyone, including the Trustee in Bankruptcy. As to the remaining averments in paragraphs 7, 8, and 9 of Section F of said counterclaim, this respondent states that they present conclu-

sions of law not necessary to be here answered, as to all of which this respondent prays strict proof.

235 This respondent does not possess any funds belonging to the debtor company. The funds which the Trustee in Bankruptcy has demanded are those carried in its decree distribution account, representing the balance offset against the indebtedness found due it in the said foreclosure decree. Such funds do not belong to the debtor; they belong to this respondent. Any funds in the possession of this respondent at the time of the appointment of the Trustee in Bankruptcy herein were subject to the unpaid bills incurred by this respondent in the operation of the premises and were used as far as they would go for that purpose and with the consent of the Trustee in Bankruptcy. As noted in the Trustee's report herein they were insufficient fully to pay such bills, and this respondent has requested and again requests that the Trustee in Bankruptcy herein be requested to assume and pay such unpaid bills.

6. The Receiver's certificate of indebtedness in said counterclaim referred to was, and is, a valid and subsisting lien on the mortgaged real and personal property, the proceeds thereof and the rents, issues, income and profits thereof, prior to the lien of the bondholders, and any payments made on account thereof were in reduction of prior liens and charges and to the benefit of the bondholders. The provision reserving \$8500.00 of net rents was inserted at the instance of your respondent's predecessor in trust and on demand of its attorneys so as to provide funds with which to pay the cash requirements of a plan of reorganization then in contemplation, but this respondent avers that such plan had been abandoned prior to the time of the payments on account of said certificate and that under 236 the circumstances it was more advantageous to pay the moneys on account than to hold them, and further avers that the provision was for the benefit of this respondent as Trustee. It denies that without right and authority it withdrew for itself and its counsel from funds of the debtor the said several sums at page 12 of the counterclaim mentioned, and avers that each and every the said sums were properly incurred and properly disbursed in the interest of the trust estate. It further avers that the management fees retained by it and by its predecessor in trust were fair and in amounts less than those customarily charged for similar service in the City of Chicago, County of Cook and State of Illinois at the respective times that the charges were incurred and paid.



7. This respondent was entitled by the terms of its trust deed to retain agents to assist it in and about the operation of the hotel premises. Among others, it retained Edward Hall, who necessarily performed services of a value far in excess of the amounts paid him by way of compensation.

8. The proceedings had in the prior bankruptcy cases against Granada Hotel Corporation and Granada Apartments, Inc., are a matter of record, to which this respondent prays leave to refer. The purpose of the mortgage trustee in opposing those proceedings is as set forth in its report. It had the right to oppose them on behalf of all bondholders, sound reasons for doing so ultimately upheld by the United States Supreme Court, and it denies the motives averred by the Trustee in Bankruptcy and avers 237 that by reason of the premises ~~its~~ motives, whatever they may have been, are beside the point.

9. It denies the averments on page 15 of the counterclaim contained that it had ample funds with which to pay the charges paid by the Trustee in Bankruptcy, and further states that such bills were a proper charge on the trust estate and should have been paid by the Trustee in Bankruptcy, and avers that it has fully complied with all orders of this Court and that it has extended full cooperation to the Trustee in Bankruptcy far beyond that requested by trustees in like cases. Further avers that at all times its actions have been controlled by a desire for a speedy reorganization and that to that end it surrendered possession to the Trustee in Bankruptcy herein, waiving its right to hold custody of the property notwithstanding the order of the Court, all of which fully appears from the proceedings and the record thereof in this cause. It denies the obstruction and evasive conduct by the Trustee in Bankruptcy mentioned and suggests that it heretofore voluntarily submitted itself to the jurisdiction of this Court, has not compelled the Trustee to resort to plenary proceedings and has put in a true and faithful account of its acts and doings as Trustee.

10. As to the amounts collected by it for heat, water and refrigeration furnished the Arlington Hotel and the reasonableness of the charge therefor, it refers to its report, as it does in reply to the averments in respect of valet service and lobby space.

11. As to all other allegations in said counterclaim contained not hereinafter nor in said report specifically admitted or denied, this respondent prays strict proof.

238 And this respondent denies that the Trustee in Bankruptcy is entitled to the relief in his said counterclaim demanded or any part thereof, and having fully answered prays that said counterclaim be dismissed with its reasonable costs and charges in this behalf wrongfully sustained.

City National Bank and Trust  
Company of Chicago,  
By John J. Bickel, Jr.

State of Illinois }  
County of Cook } ss.

John J. Bickel, Jr., being first duly sworn on oath, deposes and says that he is Assistant Trust Officer and duly authorized agent in this behalf of City National Bank and Trust Company of Chicago, as Trustee, respondent to the counterclaim of the Trustee in Bankruptcy herein; that he has read the above and foregoing answer by him subscribed, knows the contents thereof, and that the matters and things therein stated are true.

John J. Bickel, Jr.

Subscribed and sworn to before me this \_\_\_\_\_ day of  
September, A. D. 1937.

*Notary Public.*

205 And on, to wit, the 18th day of September, 1937, came The Arlington, Inc., by its attorneys and filed in the Clerk's office of said Court its certain Answer in words and figures following, to wit:

Filed  
Sept. 18,  
1937.

206 IN THE DISTRICT COURT OF THE UNITED STATES.  
\* \* (Caption—65811) \* \*

ANSWER OF THE ARLINGTON, INC., TO THE  
PETITION OF WEIGHTSTILL WOODS, TRUSTEE  
IN BANKRUPTCY HEREIN.

Now comes The Arlington, Inc., a corporation, and for answer to the petition of Weightstill Woods, Trustee in Bankruptcy herein, filed the 14th day of September, 1937, says:

1. It admits the averments of Paragraphs A, B, C, D, E, and F in said petition contained.

2. It avers that the amounts paid by it to the Granada and its Trustees for heat, water and refrigeration were in excess of the fair, usual, reasonable and customary charge therefor, and avers that it used such service and paid such amounts because of its financial inability until recently to provide its own plant for the furnishing of such service. It avers that the Granada is equipped with a plant especially designed to furnish such service not only to its own property but also to the Arlington and to the Lincoln Park Manor, and that the Granada has been and is furnishing such service at a substantial profit.

3. It avers that upon threat of the Trustee in Bankruptcy herein to discontinue service unless he was paid \$1,000.00 a month, it recently paid the Trustee the sum 207 of One Thousand Dollars (\$1,000.00) for the period ending September 15, 1937 on the written understanding that such payment was without prejudice and that the amount actually to be paid to or retained by the Trustee for such period would be fixed and determined by the Court. It further avers that it was required to, and did, install individual refrigerators in its said premises and that the Granada is not now furnishing refrigeration service. It is its intention to put in its own heating plant to provide heat and hot water. Pending the completion thereof it is ready, able and willing to pay to the Trustee in Bankruptcy or to his successor or assignee the fair and reasonable value of heat and water furnished by the Granada.

Wherefore, this respondent prays that the Court hear and determine the fair charge to be made for such service furnished and to be furnished by the Trustee in Bankruptcy and that it direct the continuation of such service by the Trustee until the completion of the said plant.

The Arlington, Inc.,

By C. S. Tuttle,

*President.*

518 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of  
Granada Apartments, Inc.,  
Debtor.

City National Bank and Trust Com-  
pany of Chicago, individually  
and as Successor Trustee, etc.  
*et al.*; No. 6986.

*Appellants,*

*vs.*

Weightstill Woods, Court Trustee,  
*et al.*,

*Appellees.*

CONDENSED AND NARRATIVE STATEMENT OF  
EVIDENCE.

519 Hearing before the Honorable John P. Barnes,  
September 21, 1937.

Present:

Messrs. Defrees, Buckingham, Jones & Hoffman,  
Represented by Vincent O'Brien, Esq., on behalf  
of City National Bank and Trust Company of  
Chicago, as Trustee.

Messrs. Mort D. and Frank Goldberg, Represented  
by Frank Goldberg, Esq.,

Weightstill Woods, Esq., Federal Trustee, *pro se*  
and also represented by Bertram W. Rosenstone,  
Esq.

The above cause came on for hearing before the Honorable John P. Barnes on September 1, 1937 at 2:00 o'clock P. M.

Mr. Woods: Mr. O'Brien has filed a petition here, your Honor. I presume it is up to him to proceed.

Mr. O'Brien: I don't know whether I call it a petition. I filed the Report and Account, if the Court please, of the City National, as Trustee. The Court will recall that on the appointment of the Trustee here, the Trustee under the indentures surrendered possession of the property and



in line with its action taken at that time it put in its account to this Court. The Trustee in Bankruptcy has filed a document here which is termed Answer, Counterclaim and Objections.

That instrument involves at least two things: namely, objections to the account of the City National and also an affirmative counterclaim on the part of the Trustee in Bankruptcy. I understand, according to the practice, that where objections to an account, trustee's report, receiver's report are filed, that those objections are to be established by the objector and that the same is true, of course, to the counterclaim, so it is my idea that in the proceeding here Mr. Woods will go ahead and establish these objections, and I think that should be the order of the proceeding.

Mr. Woods: Well, this petition is not like an ordinary accounting of a trustee. They do not come with a detailed set of receipts and disbursements. They do not file here any vouchers at all. They have merely set forth specific items that they want this Court to approve and acquiesce in; and it is up to them to establish that their conduct with reference to those particular items is the proper conduct of the Trustee.

The Court: Well, I don't know about it.—I suppose the counterclaim or the evidence supporting the counterclaim ought to be put in by the objector.

Mr. O'Brien: It is all indivisible, your Honor. There is not anything here but the counterclaim. There is not any questioning of the Trustee's account.

The Court: I have got your point and I suppose it is a question of burden of proof.

The Court: After all, it is a burden on the counsel. Take a fifteen minutes' recess and we will find out what the law is.

The Court: But I am going to rule you to produce the officers of your client for cross-examination if the other side wants to cross-examine.

Mr. O'Brien: On the other hand, if the Court please, I am entitled to rely on the objections which are made and that is why I am here to make them. That is what this is about.

The Court: You rely on this case and we can shorten this lawsuit very materially. Do you want the officers of the client produced?

Mr. Woods: I do, your Honor.

The Court: I say I am going to let you ask all about that. Whom do you want to examine?

Mr. Woods: You take the stand please.

Mr. Woods: This is Mr. Hubbard, your Honor. He is one of the officers of the City National and has charge of this—

The Court: You are proceeding under your right to cross-examine?

Mr. Woods: Yes, sir.

Mr. O'Brien: If the Court please, I would like the record to show an exception to the Court's ruling and exception to the cross-examination of the witness.

The Court: I am saying if you are absolutely sure, Mr. O'Brien there is a way to shorten it, that makes the question very simple if you want to.

Mr. O'Brien: Well, that is not the point, if the Court please. I came here on these objections. If it is the Court's ruling—I see no relevancy of that question but if the Court wants to know about these things, as I assume it does, I am prepared to go into that but in doing so I don't want to waive my position or the right to have the Trustee assume the burden of establishing these objections.

Thereupon, J. ROY HUBBART, called as a witness, was examined and testified as follows:

*Cross-Examination by Mr. Woods.*

My name is J. Roy Hubbard; I live at 3504 Lake View, Chicago. I am an employee of the City National Bank and Trust Company and have been employed there since November 30, 1932. The general nature of my duties is the supervision and management of hotels, apartment hotels and furnished apartments, under the supervision of the Trust Department of the Bank.

My direct superior officer is John J. Bickel, Jr. and in his absence I have reported to Mr. Leonard who, I believe, is the Trust Officer of the City National Bank and Trust Company and has charge of the Trust Department.

Prior to May 17, 1937 I had charge with the Agent of the operation of this Granada property. By agent I mean Mr. Ed Hall, who acted as agent for City National Bank and Trust Company. Both of us had a hand in the management. Mr. Hall spent more time at the property than I did and I relieved occasionally the resident manager. Both of us were signing checks.

The moneys which came out from the rents of this property were deposited in City National Bank and Trust Company in the commercial account, and I checked current monthly purchases against that account. Whatever surplus of money there was at the end of each month in the operating account was transferred to City National Bank and Trust Company, as Trustee in possession. After such transfers at the end of each month I did not sign the checks any more and I had nothing to do with the money. The records with reference to what was done with the money were kept by the Trustee in the Bank. The records at the hotel only showed the operating up to the end of the month except that the monthly audit of the operation showed those transactions. It showed in the monthly audit and showed in the books of the hotel. After the end of 523 the month the surplus was kept in the Bank and it is not reflected in the books of the hotel but in the monthly reports of operations. The next month we would see in the operating account what was done with the money that had been placed in the City National.

I came to your office about May 18, 1937 and we had a conversation. I believe I went to your office on your invitation and told you I would cooperate in every way to assist you. We discussed the matter of turning over the operation of the property and the money. I told you that the usual procedure in such cases had been to pay such bills as were due from the funds still on hand in order to turn over the property to you without any of these current obligations. You made the statement that you understood that all moneys were to be turned over but that you would look into the matter. I am not sure whether or not you got out the order of the court and read it to me. I reported to my superior that I had visited with you and had a very pleasant conversation.

Certain operating bills that were left at that time were paid with your approval and there were certain bills unpaid. You called me later and asked me about those bills that were unpaid.

I have not signed any checks to pay them. I think I learned of your appointment as Trustee in this case immediately after the notice was received by my superior on May 17th. The receipts for the business up to and including the 17th were deposited by the resident manager through Brinks' Express Company in the City National Bank and Trust Company. I did not have anything to do

with that particular transaction. I did not go up there 524 and ask that that money be sent down. I did ask that the house money of \$400 be sent down. That was not in the day's receipts.

If you read the order of your appointment to me in my office it was after the 17th. The money was taken over before I saw you. I think I was in your office on the 18th. The money was taken down the 18th later than 2:00 o'clock when I was in your office. I believe the \$400 was brought down prior to 4:00 o'clock on the 18th because the deposit slip in the commercial account and was used for part of the checks made out for bills which you O. K.'d.

The balance now in the commercial account is \$200 and, I believe, 20c, due to the fact that one check for \$188.55 which was drawn, I believe with your sanction, by Mr. Parker, signed by Mr. Hall and delivered to you, is still outstanding so we necessarily can not close the account.

I am familiar with the engineering set-up in the basement of the hotel. I have inspected the refrigeration system down there. I mentioned to you that it was antiquated, the piping was bad. The piping is ready for discard. The rest will last a long while, a great deal longer than the piping in the brining system. I am not officially an engineer, I am simply through my practical experience in operating property for 30 years.

There are two brine pumps in the property for pushing the brine around through the refrigerators. I believe that one of the pumps has not been in operation for several 525 eral years. I could not say when it was last operated.

Brine pumps are usually used in a dual capacity. The shafts give out very frequently due to corrosion, and in the case of those brine pumps they have been repaired many many times. I could not say the last time I had any repairs made on either of the pumps. I believe that at the time I took charge of the property only one of the pumps was in operation. I did not tell you that the system was about gone. I never mentioned the pump. It was not necessary to have the pump repaired. There were two pumps and if one gives out the other can be used. It can be repaired in a short time. It is only for circulating the brine and it does not run the compressor. If there were only one pump and that were bad, the whole system would temporarily stop. It might be a very few hours to repair a pump. I don't know how long the pump was left in that condition because pumps were repaired, from time to time, first one and then the other. I can't say when the pump was repaired.



I never heard of the room on the lobby floor called the "directors' room." I remember the room where I saw you one evening with Mr. Hall and Mr. Parker. I know the room you are speaking about. It opens off the lobby. It is approximately 15'x30'. It was the manager's office. There are two or three other offices there used in the bookkeeping. This room was needed especially for the manager, more needed in its condition than the others were.

There is the office for the clerks in front which would be no place for the manager. Behind that there are two small offices, not appropriate for a manager's office 526 in a building of that type. I did not consider that space rentable. I never made any effort to rent it because we did not consider it rentable. It would not make a satisfactory doctor's or dentist's office. I have not heard of doctors and dentists having offices in a hotel. Not offices, no, in the lobby of a hotel, the odors of medicine, anesthetics.

There is no commissary in that building. I do know of a reason why a commission should not be over there in that room, because I would never consider it profitable.

There is a ball room space also opening off the front of the lobby of that hotel. It is approximately 33' x 66'. It has a small kitchen attached to it. It is rented from time to time by different organizations, women's clubs. I did not make any effort to get any permanent tenant in that space.

There are two rooms on the other side of the lobby. A large two-room space about 26' x 36'. It was used by the guests and for their benefit. The lobby is of considerable size. At least 20' x 60' or 70'. I did not consider that ample space for the guests in the hotel for the purposes for which the salarum was being used. The salarum was being used for an amusement room. Furthermore, in connection with any arranging for commercial space, there are four levels in that lobby. The floors are marble. There is a level on the first lobby inside the vestibule. Four steps there and to the left of that you enter from the vestibule and there are four steps leading to the ladies' retiring room, toilets and men's smoking room, toilets, which are on the front of the building. There are four steps in succession, just one level. The next level 527 goes up two steps. That is just beyond the clerk's counter and the stairway going to the upper floor. Starting from the elevators at the back of the lobby you

have a place there around the fire place, on the higher level, but I don't think that it is quite as large as 30' x 40', possibly 25' x 40'. I have not figured whether or not the main lobby is about 30' x 50' or 60' so I can't say. I never measured it. It is approximately 30' x 60'.

The vestibule and entrance there have a space not as long as 30' x 40'. I would say it is about 20' x 20'. I am referring to a space beyond the first inside level before you reach the steps. There are first the steps to the lobby, then the second level, third level and fourth level. All that is open public space and is in addition to the space you have asked me about in reference to renting.

During the period I have operated this hotel I collected from the Arlington property across the street for heat and hot water and refrigerator service \$600 a month. I did have something to do with determining that sum of money. I objected to it from a fair standpoint when I found the Arlington paid as much as they did. They were paying \$940 a month, I believe, but this reduction to \$600 was not entirely on my objection. At the same time I was operating the Arlington property. From January, 1935 the City National Bank and Trust Company was Trustee of the Granada. I had nothing to do with it before that time as Trustee in possession, but only in a supervisory way or a casual way. I have had to do with the Arlington Hotel since the end of December, 1933. I

brought out that the amount charged the Arlington 528 was too great and an investigation was made and as a result of that a contract was signed reducing the amount the Arlington paid to the Granada. I did not sign the contract. I have seen a copy of it. I think you were furnished a copy by our counsel. I did not prepare any such document. It is my conclusion that the document changed the rate from \$940 to \$600 a month.

The Court: What is the name your Bank?

Mr. Woods: The City National Bank & Trust Company.

The Witness: The City National Bank & Trust Company.

The Court: How long have you been Trustee—under the mortgage of the Granada, I mean?

Mr. Woods: They claim, your Honor, they had a 529 court order appointing them in January, 1935.

The Court: Prior to that what was your relationship to this other building?

The Witness: The City National Bank and Trust Company was Trustee in possession.

The Court: When was the rate-- What was this for? Heat, what is it for?

Mr. Woods: Heat, hot water and cold water and refrigeration.

The Court: When was that reduced?

The Witness: Reduced in 1933 or 1934, pardon me, I think it was in 1934. I will have to look up the records.

The Court: Did you give any consideration to restoring it after you took over the Arlington--after you took over the Granada Apartments?

The Witness: No sir.

The Court: Did not consider it at all?

The Witness: Never have.

Mr. Woods: You say that change--

Mr. O'Brien: Just a minute. Mr. Reporter, read the Court's question.

(The record as above recorded was read by the reporter.)

The Court: "To restoring" after you took over the Granada Apartments, Inc.; never at all?

The Witness: I said no.

The Court: By the way, the Arlington building was distressed too, was it?

The Witness: The Arlington building was in default on its bond issue.

The Court: Any Bondholders' Committee in connection with them?

The Witness: There was, yes.

The Court: Who was that?

The Witness: I have not the names.

The Court: Do you know?

The Witness: I knew part of them.

The Court: Well, was it a different set of men than the Committee with the Granada Apartments, Inc.?

The Witness: They were not all the same.

The Court: Well, don't they interlock in some way?

The Witness: Some were on both Committees.

The Court: Well, who?

The Witness: Mr. W. G. Sturm; I believe Mr. C. S. Tuttle; I am not sure as to the others.

The Court: Mr. Tuttle is an officer of the Bank?

The Witness: City National Bank and Trust Company.

The Court: City National Bank and Trust Company. And Mr. Sturm, who is he?

The Witness: He is an officer of the City National Bank and Trust Company.

The Court: Any other individual—?

Mr. Woods: I think those two, your Honor, are the only ones on both Committees.

The Court: Who were the other members of the Committee? Were they officers of this Bank.

The Witness: Not all of them.

Mr. Woods: I have the names if your Honor wants them. For the Arlington property Committee, Mr. 531 Lucius Teter, C. S. Tuttle, W. G. Sturm, Arthur T. Leonard, and John J. Bickel, Jr.

The Court: Are some of those in the hearing today?

Mr. Woods: Mr. Bickel is this man's superior, and Leonard is Bickel's superior.

The Court: Mr. Teter has never been in here. Has he ever been an officer of your bank?

The Witness: Not of the City National Bank and Trust Company.

Mr. Woods: Who were the Committee for the Granada Apartments, Inc.?

Mr. O'Brien: It is an Illinois corporation.

The Court: It was not—

Mr. O'Brien: I think perhaps it also had power to furnish light and refrigeration.

The Court: They are a tenant of the corporation.

Mr. O'Brien: That is problematical. The members of the Granada Committee are Albert Peterson; Kilmer.

The Court: Who are the gentlemen? Tell me who they are.

Mr. O'Brien: Peterson is a real estate man from Peterson & Halvorsen; Louis Riddle was formerly President of the Republic Trust Company; Kilmer is a banker in Indiana; and Tuttle and Sturm are the other people.

The Court: Go on."

There was an excessive amount of public space in the Granada Building. Consideration was given to the use of excessive public space in every building. This building in the first place was zoned against commercial business,

which eliminated any business that might pay rent 532 that would be profitable. The expensive alteration

of the property would be a very considerable amount.

I do not know what could be put in there that would be profitable regardless of profit. A restaurant might be put in. I don't know of anything else. You cannot put in anything that the city ordinance would not permit. We give consideration to that question in every building we go into. We did not try to rent this for a restaurant be-



cause we did not think it would be of profit to the building. Practically all the apartments in that building were kitchenette apartments; people occupying such apartments are not the type that would patronize a restaurant. We did not advertise it. We did not list that space with any real estate agent and try to get a tenant. People who live in kitchenette apartments eat out but not in the building in which they live. I have experienced that in many cases.

"The Court: Well, of course there are other buildings and people live in them. The way to find out whether a restaurant would be profitable is to seek them."

The Witness: There are possibly about 1000 people in that neighborhood living in other buildings. The reason why that would not be a good prospect for a tea room in this building is because there are two restaurants within a block—half a block of the Granada. One of them has changed hands a good many times. There is not a restaurant in that block because the street is zoned against any commercial business having the entrance on the street. There is a limitation in the use of the ground floor space through city ordinances. I do not know of any business that would be of advantage to the property that would be profitable. As to trying to get any business there I acted on that from—on the basis of my experience in operating other properties and I live in the neighborhood.

533 "The Court: You made up your mind that that was just a dead loss of space and would have always to remain so, did you?"

The Witness: It was arranged as the center for that community of hotels. From my knowledge of living in the neighborhood for five years, I would say it was a dead loss. One of the restaurants up there on Clark Street changed hands many times. These are very cheap types of restaurants and so is the neighborhood.

These people eat many places when they go out, very often at a distance.

With the exception of one year, I believe 1929 and 1936 (part), the taxes on the Arlington property were paid up. The tax load on the Arlington and on the Granada is entirely different. They are both in the same business, they have the same management, they have about the same occupancy—the difference is that one property is much more valuable than the other and the tax is very much heavier. The tax is much heavier in proportion to the number of apartments. There is a difference in the size

of the building. You have a much greater frontage; you have a large space there that is used as a park for the tenants. Part of the difference is due to the past history of the properties, the earnings of the properties. Relative to the Granada, I have never checked whether or not the Arlington has made any more money than the Granada. The percentages of occupancy and the percentage in rates very much the same as they have in the past.

As to the matter of the change from \$940 to \$600 in monthly charge to the Arlington. I have a copy of the contract that was entered into between the Granada 534 Apartments, Inc. and The Warren-Hart Apartment Building Corporation covering that. My recollection is that the amount of \$4080 of accumulation for the 1933 was not paid. They refused to pay. I said the amount was excessive and that it was investigated and an accountant's figure was secured from experts. It isn't a fact that pressure was put on to force it through.

"The Court: Do you call the Arlington—you call the Arlington, what is this other building?"

Mr. O'Brien: The Arlington Hotel.

The Court: Are those bonds all held by the public?"

The Witness: They are. They are scattered. I am not familiar with them, I only have the management there.

"The Court: Are all of these Granada Apartments, Inc. bonds held by the public?"

Mr. O'Brien: Yes, with the exception of a small amount of the first covered by the—

The Court: What?

Mr. O'Brien: A small amount, six thousand or five, not very much. The second is—no bonds."

The Witness: I believe a valet tailor shop is in the basement of the Granada. It has been there all the time I have managed the Granada. The Granada received a commission from all the business done by the valet. The amount received was the amount that was done for the Granada. The valet was serving guests of the Arlington and anybody else that he could get. The commissions, so far as the guests of the Arlington was concerned were paid to the Arlington. The guests gave the business secured from the hotel, and the business was handled by the hotel in their accounting. The Arlington did not furnish any space to the tailor. I have considered whether it was 535 improper for a trustee operating two properties, one of them furnishing space to a tailor to take the commissions on the business of the building across the street

and paying it to that building, when the Granada was furnishing the space and the service to this tailor. As to whether or not it was proper, the tailor shop in the Granada has been operated as a convenience to the guests of the Granada; its business was not heavy and any business that he could secure from any outside source would be of benefit to him in operating his shop. Many hotels operate shops that way. Others have their work done by various cleaning and pressing concerns and all receive a commission for it. It was perfectly proper to do that because they could secure the same commission from some other source if they had his work done elsewhere. It was to assist him in keeping the shop open for the benefit of the Granada.

The amount so paid to the Arlington during the years 1934, 1935, 1936 and 1937 ran over fifty odd dollars and eighty odd dollars a year. It was approximately \$250 for that period.

"The Court: Who handled the money?

Mr. Woods: The method of business, your Honor, was for the charges to be made in the hotel office; that is the hotels have a receiving room and everything that comes in to any guest is charged on the books at the hotel office, and that was done with reference to this valet. Monthly the valet would send a bill to each hotel office for his charges; the hotel would then take out its commission and pay him the difference and they collected from the guests."

The Witness: We did not charge this tailor any direct rent. He had no space at all in the Arlington. He occupies the space under that solarium, which is probably twenty-five feet square. I don't know that that space 536 is of any rental value particularly. I understand you have rented it now for \$25. a month and eliminated commission, which about offsets the commission we were getting before. I doubt if it is worth \$25 a month because I don't think the man will stay there very much longer. We took the commission on the business done and had him stay there for the benefit of the guests and get quick delivery. We did not pay to the Granada any of the commissions which were collected for the business because the Granada was not entitled to it. We had charge of both funds and retained all that money for the Arlington because it belonged to it. That was my thought about it.

There was an incinerator in the building. At different times I have inspected that incinerator, the last time was along early this year. It has been repaired a number of

times and we did not feel that we had the money to rebuild it. We endeavored to get along with as little expense as possible on it. It was given attention but it was not rebuilt. There were repairs made to the brick work occasionally. I have not a record here of when there were any such repairs made. There were charges made for those repairs at times when those repairs were made by the employees. As far as I know, no money was spent on repairs to the incinerator by outside parties except for a certain amount of material. I could not say how often I did look at the incinerator during the period I was managing the Granada. I did not have any contractor or other person examine it to see what the cost of repairs and replacement would be. Mr. Hall may have secured somebody. I do not know whether he did or not. As far as I know it was not done during my management.

537 Thereupon JOHN J. BICKEL, JR., a witness being duly sworn was examined and testified as follows:

*Cross-Examination by Mr. Woods.*

My name is John J. Bickel, Jr. I live at 10437 Hale Avenue. I am an Assistant Trust officer of the City National Bank and Trust Company. I have been connected with the City National Bank and Trust Company since its organization, since October 5, 1932. Prior to that time I was with the Central Republic Trust Company, and prior to that I was in the contracting business until 1928, and prior to that I was with the Central Trust Company of Illinois.

The Central Republic Trust Company functioned until William L. O'Connell was appointed receiver. I don't recall that date, I think November 21, 1933 was about the right date. It was after the City National was organized and the Central Republic Trust Company ceased to be a bank of deposit. I am Mr. Hubbard's superior. His activities with reference to the Granada property are under my direction.

I knew about this reduction of charge for the services to the Arlington from \$940 to \$600. My opinion and, and I think we can demonstrate that my opinion is correct from engineers \* \* \* disinterested engineers' testimony, the figure of \$600 a month, which was paid by the Arlington to the Granada is in itself excessive and at the time



that adjustment was made and a new contract entered into between the Warren-Hart Building Corporation and the Granada Apartments, Inc., our advice as employees of the Central Republic Trust Company was that the 538 figure set should be one that would be beyond attack and, if anything, should be more than the services were really worth.

"The Court: Why? Why was that?"

The Witness: Because we felt at the time that perhaps some time someone would question the amount that was paid due to the dual relation of the two properties. At that time the Central Republic Trust Company was Trustee under both mortgages, although not in possession of both. That figure, in my opinion, and I think that can be supported, was at least \$75 a month too high.

I am a graduate architect. I advised the figure based on calculations which we have made ourselves and which we have caused to be made by a disinterested engineer, and on certain fee reduction in the Granada and the amount of money necessary to build a boiler plant in the Arlington, and have checked those figures against the actual costs in the Granada for the three properties. You notice, your Honor, that the Granada heats also the Lincoln Park Manor as well as the Arlington and that there is a very complicated heating arrangement there; one set of pipes goes under an alley and another set goes under a street from the Granada.

"The Court: By the way, did you unite there three properties under one management?"

The Witness: One of the properties is under state court receivership and has been, I think, since 1932.

I am on the Committee—the bonds are deposited. It is in the District Court.

"Mr. O'Brien: The owner is an individual.

The Court: Who?

Mr. O'Brien: Mr. Gehn through a foreclosure years ago.

The Court: Is there any equity in the building?"

539 The Witness: I doubt if there is any equity in any of them. I am not a member of the Bondholders Committee on the Granada. I was on the other two. My company was Trustee in all three. There was consideration given to the desirability of uniting those buildings under one management as a result of reorganization. I think we have talked about it in the shop a number of times and the job seemed insurmountable due to the taxes and every-

thing. The furniture situation of the Lincoln Park Manor is different from the other two.

"The Court: I have seen those insurmountable things. Go ahead."

The Witness: I said I had an engineer make an investigation of this change of charge to the Arlington or the Granada. There was an engineer made figures. That was at the time the contract was changed. He made two reports. He made one in 1929 or 1930 and another one at a later time, I believe 1932 or 1933, in which he revised his figures. His name was Lewis. It is hard to say whether or not both of these reports of 'Mr. Lewis' were based upon estimates of costs and not upon actual operations. He used in his payroll actual costs within a few dollars. They check with the audit of this company within a few dollars. I do not know whether he said that and I do not know whether it is a fact that when he made his report in 1933 that he stated that he would much rather have actual audited costs than to have the figures that were furnished to him.

"The Court: Why didn't you reorganize this property, and get it out of court years, probably, ago?"

540 The Witness: We did not have enough bonds. We had 45%. The deposit has always been very low. I have not been on these committees. I know the committee has had many many meetings trying to get it out of court. I did not try it.

"Mr. O'Brien: We got it in here.

The Court: What?

Mr. O'Brien: I say we got it in here.

The Court: Well, but you didn't get it in here until about three years too late, that is what I am complaining of. Why didn't you get this building out of court before three years ago?"

The Witness: I am in charge of the operation of the properties, I cannot answer that.

"The Court: Who can answer that? Now I want somebody from the bank to tell me why they did not get it out of court three years ago."

"Mr. Woods: I think Mr. Leonard can answer that question, your Honor."

"The Court: Also I would really like to know why you did not try to put those three buildings together. It seems to me that would have been a constructive job for a banker. Have somebody tell me that.

Mr. Woods: Do you mean in here, too late now, your Honor, if these people want to?

The Court: Oh, well, I am not looking back. I think that would be a nice job for some banker to refer to.

The Witness: The Arlington is all finished and reorganized.

The Court: It has not any heating plant and no refrigeration plant—that is a nice job for some banker to refer to.

541 The Witness: It has refrigeration now."

I don't recall that you and I had a conversation the day you were appointed. I was advised by our counsel on that day you were appointed, but I don't recall I had a conversation with you until the next day or several days following the actual date of your appointment. You probably asked me to turn over all the money which the City National Bank had with reference to this property and to turn over all papers and documents pertaining to this trusteeship.

(Whereupon an adjournment was taken until eleven o'clock A. D. September 22, 1937.)

542 Met pursuant to adjournment, 11:00 o'clock A. M., September 22, 1937.

JOHN J. BICKEL, JR., resumed the stand and further testified as follows:

*Cross-Examination by Mr. Woods.*

(The witness identified Court Trustee's Exhibit A for identification, being letter dated June 1, 1937, from Court Trustee to City National Bank and Trust Company, individually and as Trustee, and others, requesting certain documents and moneys which may be shown to be due from audit being made.)

The Witness: I have received a copy of letter dated June 1, 1937, marked Court Trustee's Exhibit A. I caused an examination of our files to produce what documents we had that were listed on this letter and those were turned over, I believe, to Mr. O'Brien, and there after to you. I think all moneys and documents have been turned over through our counsel.

(COURT TRUSTEE'S EXHIBIT A was offered and received in evidence.)

The Witness: The documents that were turned over to Mr. O'Brien were all the documents that we could find that were requested in your letter that we had in our files.

I think at later dates during the summer you requested me to turn over any funds which I had. I said that the funds of the operating account had been turned over with the exception of some eleven or twelve dollars that left the commercial account open due to an uncleared check which you were holding. We did not have any money left except that small amount.

(The witness identified Court Trustee's Exhibit B, being account of City National Bank and Trust Company, 543 as Trustee, containing summary analysis of cash accounts from January 4, 1935, to May 17, 1937, relating to the Granada Apartments Hotel.)

The Witness: That is our account made by our auditors after you were appointed trustee.

The reason why I waited until August 25th to turn over the moneys to the Court Trustee was that you had held certain operating bills that we had been led to believe would be paid and I wanted to have the entire account with all bills paid, with the exception of a few that we knew we would not have the money to pay and hoped that you would release the check, so that the small balance of twelve dollars could be turned over, so that the entire amount could be prepared, cleared at once, without any hang-overs of uncleared checks, and only the operating bills to the extent which we did not have the money to pay them.

I don't know whether you have ever said that you would pay them or not, but in other cases such unpaid obligations as were left at the end of the period were paid by the successor trustee, without question.

The statement you make that when you first talked to me about the 18th of May, I insisted that I would not let you pay any of our bills; that I was going to see that the parties from whom I made purchases were paid and I was not going to allow you to have anything to do with my merchandising bills, and that I insisted on paying them myself up to the 17th of May, is not an accurate statement of fact. In the first place, you did not call me on the 18th of May, and in the second place I told you we would pay the unpaid obligations to the extent of the cash on hand. The only reason we did not pay these bills 544 is because we did not have sufficient money to pay all of them.

Referring to Exhibit B for identification, in which it



says "Balance at end of Period," I believe our auditor made a correct audit when he put those figures down. It shows an amount in a decree, distribution account, which our counsel has advised we could turn over here on separate order, and we have followed our counsel's advice on that item. Also a small item in the interest account of eleven dollars, on which the same advice was given to the mortgage trustee by its counsel; and you were so advised.

As to the order entered by Judge Barnes on May 17th to turn over money and property, the interpretation of the orders is left to counsel by the mortgage trustee and not to me as an individual, and I follow the advice of our counsel implicitly.

It is correct that on August 27th you came to my office with that account which our auditors had made and with a copy of the order of the court and read to me the order of the court directing me to turn over everything that I had on the 17th of May. I did not say at that time that on advice of counsel I would not obey the order of the court. I said on advice of counsel we were awaiting a separate order on turning over of these two separate items.

"Mr. O'Brien: Oh, if the court please, I object to this examination, argument.

"The Court: I am interested in this; this is not the first time I have seen trust companies who did not obey court orders. I just want to get their mental attitude."

The Witness: I knew you were temporary trustee.  
545 Our counsel has advised that neither of those two items which you mentioned are proceeds of the property. They demand a special order for their disposition; they are not properly a part of the debtor estate unless a separate order is entered. I don't think the order is clear on that point. I do not now refuse to turn over this money upon our audit and this order, if Judge Barnes entered an order that we turn it over.

"Mr. Woods: Well, here is the order. Do you refuse on this order and that audit to turn over the money?"

"Mr. O'Brien: That is objected to, if your Honor please. He is arguing with the witness.

"The Court: He may answer that yes, or no.

"The Witness: I think the answer to that is, we will still be guided by the advice of our counsel.

"Mr. Woods: You refuse, then, to turn over the money?"

"The Witness: I did not say that."

(Whereupon COURT TRUSTEE'S EXHIBIT B was offered and received in evidence by the court.)

The Witness: I did not at any time examine the incinerator at the hotel. That is Mr. Hubbard's function. I did not know of my own knowledge whether it was in good shape or not.

I am familiar with the lobby space and the space adjacent thereto with reference to rental. My opinion of the lobby is that the spaciousness of it and the so-called ballroom, which is rented to women's clubs and other civic organizations, which brings into the hotel a very desirable class of patronage, of which many of them are prospects for apartments, contributes a great deal to the rentability and the income of the remainder of the hotel. The lobby is not waste space, but allows guests to mingle, to have card parties, a home-like atmosphere, that smaller lobby 546 bies in which anything commercial is admitted, completely ruined. There are only 114 units in this hotel. It is a family hotel. There are only 18 hotel rooms, and to attempt to commercialize a lobby of that sort I think would be suicide.

We have a plat of that space here. I think I am experienced in the operation of hotels. I think that the public space in that first floor is perhaps larger than I would certainly design if I were building a hotel. I think in this hotel the first floor space is excessive. If I were building a hotel of that size, that number of apartments, that many rooms, I think 25 per cent of public space on the first floor would be ample, including elevators. I think that amount would be practicable, I have figured it that way, but I guess it is probably pretty close to fifty.

I considered what I could do to remedy that condition. In the first place, as an employee of a mortgage trustee, it is our opinion, based upon advice of numerous counsel, that a mortgage trustee has no right to remodel property. I considered various theories on it, whether we had that right or not. This zoning ordinance is very specific as to what commercialization can be done on an apartment zoned street, there is no question about that. Then, if the street could be re-zoned, I have consulted with various operators of other hotels as to what commercial space, interior commercial space, in a hotel is worth. We operated a property, such a hotel, for a considerable length of time at Howard and Bosworth, the Broadmoor, in which the lobby had in it the rear end of stores, which fronted on Howard Street,

with very unsatisfactory results, in so far as both the stores were concerned, and the lobby; it is still unsatisfactory, 547 although we have nothing more to do with the property. I have never believed, and in the discussions we had concerning this property when we took it over, we decided and still believe that the lobby, while it is excessive, contributes to additional rentals that are derived; that the apartments rent at a premium compared to others in the neighborhood. The occupancy has been good. The people who occupy these apartments like this lobby. They go there because of the lobby.

I don't know how long the building has been in receivership. I think it has been in trouble almost from the day it was built. I don't have the figures as to the amount of unpaid taxes. The taxes are materially improved. There was a net income, a very substantial net income, which was used for both taxes and other lines.

(Mr. Woods stated that there were approximately \$50,000 of unpaid taxes, including 1937.)

"The Court: About how much in fees have been paid, do you know?

"The Witness: No.

"The Court: Have you any idea?

"The Witness: No, sir.

"Mr. O'Brien: The unpaid taxes are thirty-nine thousand five, and there was paid on account of taxes out of income approximately thirty-three thousand dollars.

"The Court: Thirty-nine thousand and what penalty?

"Mr. Woods: Thirty-nine Thousand Dollars, penalties and taxes, and for 1937.

"The Court: It amounts to about what?

"Mr. O'Brien: Well, we have not computed that.

"Mr. Woods: If you include the penalties it will probably run to Sixty Thousand Dollars, your Honor.

548 "The Court: How much fees did the trustee who was in possession get?

"Mr. Woods: I have not seen any petition by them, your Honor. I looked at the record this morning. If they have filed any, it is not here.

"The Court: Have you filed a petition?

"Mr. Woods: The bondholders' committee filed a petition and the attorneys for the bondholders filed a petition for fees.

"The Court: I understood you to say—was I correct in my understanding, that you had to do with the management of the property?

"The Witness: Yes.

"The Court: You did not have anything to do with the termination of the trust?

"The Witness: No, sir. What do you mean, termination?

"The Court: Well, as trustee you are acting in a trust capacity, and it is your duty to do the best you can for the estate. I suppose, at least I would assume, that somebody who is trustee ought to consider the desirability of the termination of the trust for the benefit of the estate. Whose duty is it, in your bank, to consider these questions?

"The Witness: Termination, for what reason?

"The Court: The ending of it, so as to get it out of court, get it out of your hands and into the hands of the real owners.

"Mr. O'Brien: Mr. Sturm is the one, your Honor.

"The Court: Who is Mr. Sturm? What office does he hold?

"Mr. O'Brien: Vice-President.

549 "The Court: In the Trust Department?

"Mr. O'Brien: Yes.

"The Court: He is the man that determines that? That is not your duty, to give any consideration to it?

"The Witness: No, sir.

"The Court: Did you ever talk it over with Mr. Sturm?

"The Witness: My duty, your Honor, is to produce as much net income from the property as it is possible to produce.

"The Court: Suppose you had something in your hands as trustee or receiver and you see it is getting into a hole and staying there year after year; isn't it your duty to say something to somebody who ought to get this out of here?

"The Witness: Yes, if we have a property that is that bad I generally go to Mr. Sturm and tell him it is hopeless.

"The Court: Do you think that with this property?

"The Witness: This property is not hopeless. There has been a vast amount of money paid in taxes and on the receiver's certificates and on the furniture. This property produced real—

"The Court: Well, how much was paid on the receiver's certificates?

"Mr. Woods: There is a total of \$7,500 paid on the receiver's certificates.



"The Witness: Receiver's certificates—

"Mr. O'Brien: The receiver of the property probably paid \$5,000 and the City National paid \$2,500 and \$511.01, the certificate being reduced to approximately—

"The Court: You say the condition of this enterprise improved, taking into account the fees paid the trustee, receiver and counsel?

550 "The Witness: Yes, sir.

"The Court: You say it improved?

"The Witness: Yes, sir; no question about it.

"The Court: There is less tax due now than there was years ago?

"The Witness: The conditional sales contract was reduced from the time that the Central originally went in. When we took over the operation it was forty-three thousand.

"Mr. O'Brien: Nineteen thousand four.

"The Witness: Nineteen thousand; nineteen thousand, reduced to three. There was a total of \$32,969.41 applied on taxes.

"The Court: How much?

"The Witness: Thirty-two thousand.

"The Court: Over a period of eleven years?

"The Witness: Well, from March 21, 1934, to the date of Mr. Woods' appointment.

"The Court: What taxes accrued; what taxes and penalties accrued during that period?

"The Witness: I don't have those figures.

"The Court: - Well, you have to have them in order to determine whether it is better.

"Mr. O'Brien: They amount to about eleven thousand; the latter years, and as low as six.

"The Court: Well, you thought this property was improving, did you?

"The Witness: No question about it.

"The Court: That it was getting better?

"The Witness: The net income did improve, as did the gross.

"The Court: You did not talk to—what was the other man's name?

551 "The Witness: Sturm.

"The Court: You did not ask Mr. Sturm to terminate the trust?

"The Witness: No, sir.

"The Court: And start to getting it out?

"The Witness: No, sir.

"The Court: You have no idea that these bond issues, all being rehabilitated, paying even the taxes and paying back interest and reinstating the bonds—you had no idea of that kind, did you?

"The Witness: Taking, your Honor, all the decrees and reorganization proceedings from time to time, yes, I did. I asked what progress was being made. It would be general conversation in a shop of our kind; but as to suggesting we resign and call this hopeless, no.

"The Court: Did you consider getting it out of court and into the hands of the real owners, that is what I want to know?

"The Witness: Of course, that is not—that is something that Mr. Sturm—that is his job. My job is to run the properties.

"The Court: Do you know whether he considered that, or not?

"The Witness: Surely, he did, many times.

"The Court: Did he discuss it with you?

"The Witness: Just as we discussed other reorganizations, as to what progress was being made, generally.

"The Court: What can you say about that?

"The Witness: Well, that is,—it extended over such a long period of time I would be glad to give you what I can remember of it.

552 "The Court: Well, tell me what you can remember.

"The Witness: Well, I knew, of course, in a general way, of the previous involuntary action—

"Mr. O'Brien: Excuse me, just a minute. If the court please, I have Mr. Sturm here. I understand—

"The Court: I know, but here is the man that managed the property and in touch with it and he thought it was getting along, but he never did anything about rehabilitating it. I want to know what they did toward getting it out of court.

"Mr. O'Brien: I wish to make this statement—

"The Court: Just wait. I am interrogating the witness. Just don't make any statement on the record until I get through interrogating the witness; then you can interrogate the witness.

"Mr. O'Brien: This last year—

"The Court: You heard what I said, sir. Will you answer my question?

"The Witness: Yes, I knew, of course, of the involuntary petition which ultimately was dismissed by the Su-

preme Court and I knew of this petition which I had heard would be—no doubt result in the sound reorganization—good title, rather; and from time to time would ask what progress was being made—

“The Court: There were officers of your company held sufficient bonds in their hands to make a valid proceeding in this court?

“The Witness: I don’t think so. As to the amount of—

“The Court: Did you ever investigate that?

“The Witness: The amount of bonds deposited has always been low, yes.

“The Court: How many did you have?

553 “The Witness: I don’t recall. I think it is in the neighborhood of fifty per cent, or less.

“The Court: Fifty per cent of the bonds?

“The Witness: Yes, sir.

“The Court: You did not consider whether or not you had sufficient bonds to make a valid proceeding in this court?

“The Witness: Your Honor, again, that was not my job. I was interested, but all my responsibility was getting the most out of the property.

“The Court: For whom?

“The Witness: For the bondholders, of course.

“The Court: Go ahead.”

The Witness: Indirectly, through the application of the income to taxes and receiver’s certificates and furniture contract, the bondholders have had something out of the property in the last six years. No money has been paid on account of interest or otherwise since I have had to do with it. I took a very reasonable management fee.

It sometimes happens that a piece of real estate bought for a certain purpose has to be put to some other use because of a change of the neighborhood or something else.

I have told you, Mr. Woods, that in my opinion the lobby space where the solarium is, where the ballroom is, and the directors’ room is not waste space. I do not believe that it could be used commercially. I did not advertise it nor try to get any tenants for it. My opinion is that it was useless.

“The Court: You also know that you were advised by many counsel that a mortgage trustee had no power to change it; is that your understanding?

“The Witness: I knew that, yes

554 "The Court: You also knew that the building ordinance would not let you, if you wanted to, did you know that?

"The Witness: No, I did not know it at the time, because that was not true at the time; the ordinance has been amended since that time.

"The Court: You also knew that space was very valuable because of the ladies who came in there and they might possibly rent apartments for themselves, you knew that?

"The Witness: They did rent apartments in the building and they paid rent for the ballroom."

The Witness: The total annual rental received from these ladies with reference to the ballroom space was very small. I think a thousand dollars a year would be high. I think it is used by them one afternoon a week during the winter months. I believe other organizations come in there and pay—if they are desirable—pay a nominal rent for it. I don't know how many other organizations have been in there during the year. Mr. Hubbard can tell you better than I can what is the rental of that space by the year, the way it has been rented.

"The Court: How much do you think it was?

"The Witness: I would be surprised if it brought in over seven or eight hundred."

The Witness: I knew about the tailor shop. I thought it was nothing unusual but perfectly proper, that they were paying commissions to the Arlington, although the Arlington furnished him no space. Under the circumstances, I think that a trustee in a fiduciary capacity with respect to these two properties should do that sort of thing.

I did not know that one of the brine pumps had been out of commission for several years. I had been in the basement, but all of those problems are under Mr. Hubbard's management. Whether or not the pump was  
555 usable or not I left entirely to Mr. Hubbard.

I am not familiar with an operating contract whereby any business that the Central Republic Trust Company had that was worth anything would be shifted over to the City National. The City National Bank and Trust Company of Chicago began furnishing service for the Central Republic at the time the Central Republic went into possession. The idea of the trustee going into possession was to remove it from the receivership and save considerable fees.



"The Court: And prevent the bondholders getting it into a 77B proceeding, wasn't it?

"The Witness: No, sir.

"The Court: It was not?

"The Witness: No, sir, I don't think so.

"The Court: Did you ever hear that, sir?

"The Witness: To prevent the bondholders?

"The Court: Yes, sir.

"The Witness: No, sir.

"The Court: Nobody ever told you that you could just get a trustee in possession and the bondholders could not reorganize; they never told you that?

"The Witness: No, sir; quite the contrary. It was all hoped in the decision that a good, valid means would be found of getting it into 77B.

"The Court: You were searching for means, were you?

"The Witness: Well, that meant, I am telling your Honor that conversation.

"The Court: Did you ask counsel to advise you whether or not it could get in?

"The Witness: No, sir, I did not, no, sir.

"The Court: Do you know whether anybody else did that?

556 "The Witness: I presume Mr. Sturm did."

The Witness: When the City National Bank took over this property formally on the record, in January, January 3, 1955, the same personnel took it, doing the same thing. We knew that the accounts of the Central Republic Trust, which was formerly on record, were correct. I don't know what more checking we could do than prepare them.

I have heard of a case called *Harris vs. Tuttle*. I heard that it went to the Supreme Court of the United States. I understand that the bondholders' committee prevailed in that. I don't think it is a fair statement to say that the bondholders' committee defeated this court getting control of the property. The court found that the petition was not a good petition. I am not on the Granada Committee and did not have anything personally to do with it.

The disbursement made for paying the fees with reference to that proceeding was not made by me. I think Mr. Sturm could testify as to that disbursement. I signed the petition which is here, objecting here before the court.

(Mr. Woods handed witness copy of petition and directed his attention to paragraph 21.)

The Witness: It is right that I swore to that petition. (Mr. Woods handed witness a transcript the record and the briefs in case No. 5488, United States Circuit Court of Appeals for the Seventh Circuit, and asked witness to point out to the court, if he could anywhere in that record that the City National Bank and Trust Company was a party to it.)

The Witness: Mr. Woods, this petition was drafted by our counsel. I executed it as an officer of the bank, and, as I told you yesterday, I am not a lawyer; and I think that there are other officers of the bank that can give 557 you the testimony that you want, give you the answers to the questions you want.

"Mr. Woods: Well, you know whether A is a party to a lawsuit or not, don't you? That is just a plain fact; the name is there or it is not there; you don't need any legality to that, do you? People don't get into lawsuits by just some mirage or some atmospheric transaction, do they? That is not a matter of thought; it is a matter of fact. Do you see the name of the City National Bank and Trust Company anywhere on those papers.

"The Witness: Well, I don't see it on the cover.

"Mr. O'Brien: Well, I object to that; your Honor.

"The Court: He may answer.

"Mr. Woods: Then it is not there?

"The Witness: I don't know whether it is there or not.

"Mr. O'Brien: Whether the name appears on the cover—

"Mr. Woods: Then you signed that petition without knowing whether or not the City National was a party to the transaction, or not?

"The Witness: Well, I have testified to it correctly, and why I signed the petition that was presented to me by counsel."

The Witness: I had the petition before me an hour and a half. I signed it on the 27th. My recollection is that the petition came in after your visit to Mr. Leonard's office. Mr. Leonard and I read it over. I don't believe that the petition says that the City National Bank and Trust Company carried on that litigation.

558 (The witness examined the document handed to him.)

The Witness: I don't believe that the bondholders' committee conducted that lawsuit. It is not in there. I had nothing to do with paying the fee for that lawsuit. Mr. Sturm handled that personally.

As to the receiver's certificate, I said that amounts had been paid on the receiver's certificate; and again, counsel has assured us that this was a lien that had to be discharged along with other liens and along with the unpaid balance on the furniture.

City National Bank and Trust Company of Chicago was trustee under the trust deed securing the real estate. I am not familiar with every paragraph in the indenture and do not think I can find a clause that tells the trustee to buy personal property or to pay receiver's certificates for personal property. I would ask counsel about that. I did ask counsel. He said that payment of the furniture must necessarily be made or it would be removed and that the receiver's certificate was a lien. I did not ask him to point out any clause of that trust deed that enabled a trustee of real estate to pay for personal property. I did not ask him to do that. I did not ask him why I had the authority and duty to make the payments. I did not ever inquire as to whether the bondholders had already bought that personal property when they paid for their bonds. I did not get a copy of the bondholders' prospectus to see what was included in the sale of bonds to the bondholders. I had no connection with the underwriting corporation and I did not know. I did not inquire whether

I was paying for the property twice or not. On the 559 advice of counsel I paid it. The same thing is true with reference to the LaSalle furniture account. I did not ask counsel to point out any clause in the real estate trust deed that authorized me to pay off a mortgage on some personal property. I think the amount paid was from eighteen thousand to three. It did not occur to me to find out really who were the people being paid off in paying those liens.

"Mr. Woods: Would it surprise you to know that certain officers of the Cody Trust Company had signed an agreement to purchase that receiver's certificate if it was not paid off in a certain time?

"The Witness: I am not familiar with it.

"Mr. Woods: You are not familiar with it?

"The Witness: No, sir.

"Mr. Woods: You never inquired. Would it surprise you to know that the LaSalle furniture account was up as collateral over at the Continental Bank for some notes which were signed by persons connected with the Cody Trust Company?

"The Witness: I knew it was at the Continental Bank; but that is all I knew about it."

The Witness: I think a fair statement of it is that counsel advised that payments should be made and they were made. I think that I did not have any authority of any kind outside of the language of the trust deed under which the City National Bank and Trust Company was appointed.

"Mr. O'Brien: Well, I object to that, your Honor. That calls for the conclusion of the witness on a legal matter.

"The Court: Well, he was acting. He may state 560 who he was acting under, what he claimed his authority was.

"Mr. Woods: You thought it was more important to pay off these claims that the Indemnity Insurance Company of North America had and that this man over at the Continental had than it was to provide any money at all to these bondholders during this period?

"The Witness: Well how could money be applied to the bondholders with the taxes and these other items in default?"

The Witness: We applied \$26,998 and \$5,571 to the taxes. I cannot give you the reason why \$7,500. and some interest was paid on the receiver's certificate instead of being used to pay taxes, but amounts were paid on everything to keep everything in equilibrium.

"Mr. Woods: You kept everything in equilibrium except the bondholders, didn't you?

"The Witness: I think everything we did was for their benefit, every step.

"Mr. Woods: Do you think it was for their benefit to delay this present proceedings here in this court by opposing the other proceeding for three years?

"The Witness: If the other proceeding would not result in a good title, yes.

"Mr. Woods: If you had entered your appearance and gone ahead with the proceedings, what possible objection to the proceedings could there have been?

"Mr. O'Brien: I object to the question, your Honor. That calls for a legal conclusion of the witness.

"The Court: Let's see. He is exercising some judgment. Let's proceed.

561 "Mr. O'Brien: What has it to do with the operation of the property?



"The Witness: I am not qualified to answer that question.

"Mr. Woods: You are not qualified to answer that question?"

"Mr. O'Brien: Here, your Honor, is a matter of—the court wants to know what—

"The Court: He is managing the property. I want to know—Now, the problem in my mind is why this property has not been gotten out of court all these years when it might have been gotten out. That is the big problem I want to know.

"Mr. O'Brien: It does ~~not~~ call for a legal conclusion of the witness.

"The Court: Well, it does.

"Mr. O'Brien: Read the question.

"The Court: Overruled."

The Witness: I am not familiar as to whether or not counsel for the City National Bank and Trust Company filed in this proceeding we are now here in court on about the very same objections, in the very same language, which they had filed in the proceeding, 77B case, three or four years ago.

"Mr. Woods: You are not familiar with that fact and isn't it a fact that afterwards, after a conference in—you decided to come in here and let the court dispose of this property as it could have done three years ago?"

"The Witness: I am not familiar with that either."

562 The Witness: Mr. Sturm would know about that.

I did not know that all the time that a 77B case was on its trip to the Supreme Court and back, that there was a second 77B case pending in this court with reference to the same property. I did not know that that case remained here on the docket of this court with reference to this debtor, with reference to this property, and was not dismissed until the present petitions were filed and after the court had determined to find they were filed in good faith. I did not know that that proceeding was pending here all the time and remained in this court. I did not pay out all this money knowing that. Counsel undoubtedly told some officer of the bank.

Mr. Sturm or Mr. Toon could testify as to the foreclosure in the state court. I am not the proper one to know about that.

"The Court: Put this in the record (handing plat to Mr. Woods).

"Mr. Woods: All right, your Honor. Mark that Court Trustee's Exhibit C."

(Whereupon Trustee offered and there was received in evidence COURT TRUSTEE'S EXHIBIT C, being first floor plan which has been referred to by Mr. Bickel in his testimony.)

WILLIAM G. STURM, called as a witness, being first duly sworn, was examined and testified as follows:

*Cross-Examination by Mr. Woods.*

My name is William G. Sturm. I live in Chicago. 563 I am trust officer of City National Bank and Trust Company. My work involves reorganizations and in that sense I do have some contact and connection with this property.

I am a member of the bondholders' committee. The other members of that committee are Mr. Lewis Riddle—Mr. Riddle has his own business now. He formerly was with the Cody Trust Company. Albert Peterson also has his own business. He was formerly with Cody Trust Company. Mr. Kilmer was and perhaps still is in the investment business in Elkhart, Indiana. Mr. Tuttle is the other member of the committee, with myself. Mr. Tuttle is a trust officer of the City National. I have been a member of this bondholders' committee since it was organized in 1933. Mr. Tuttle has been a member during that period. Both of us have been with the City National Bank and Trust Company during that period.

The meetings of the committee were usually held at the City National Bank. Many of the earlier meetings were held in Mr. Riddle's office at the Cody Trust Company. Since the Cody Trust Company folded up, the operation is at the City National Bank.

I was not with any of the underwriters, your Honor, but as I understand it, forty per cent of the issues was distributed by the Chicago Trust Company and sixty per cent was distributed by the Cody Trust. Now, there may have been other dealers that in turn distributed. I believe there were. They were the two underwriters and distributors.

I have not had anything to do with the actual physical operation of the hotel. I have never been there for the pur-

poses of operation, though I have been through the  
564 property a number of times. I had nothing to do with  
the renting, repairs or physical condition of the prop-  
erty.

My duties with the City National Bank and Trust Com-  
pany with reference to this property are perhaps a little  
difficult to explain. They had to do with the bond issue,  
the defaults under the bond issue, and to try to find a fair  
and feasible means of reorganizing the bond issue.  
Primarily, those were my duties.

"The Court: Let me interrupt you. Why did you and  
Mr. Tuttle ever allow yourselves to become identified with  
this committee?

"The Witness: Well, because of the fact we had the re-  
organization, and we were acting with other committees who  
served other trust companies issues, because the Chicago  
Trust Company distributed forty per cent of this issue and  
we thought it was only proper and right that some of our  
personnel should act on this committee.

"The Court: And the Chicago Trust Company had been  
absorbed by the National Bank of the Republic, and the  
National Bank of the Republic was absorbed by the Central  
Republic Bank and Trust Company, and the Central Re-  
public Bank and Trust Company was absorbed by the Cen-  
tral Republic Trust Company and that was absorbed by  
the City National Bank and Trust Company, and the City  
National Bank and Trust Company was reorganized and it  
was transacting the business of the Central Republic Bank  
and Trust Company, is that correct?

"The Witness: I don't think that is entirely correct,  
your Honor. The City National absorbed some of the  
565 fixed liabilities of the other banks, and it did take  
over—

"The Court: Now, the City was servicing the Central  
Republic Bank and Trust Company?

"The Witness: It did service many of the trusts of the  
former banks and several of the—

"The Court: But that is the reason you two gentlemen  
allowed yourselves to be persuaded to become a member of  
the bondholders' committee?

"The Witness: That is right.

"The Court: And these other men, two of them acting  
with the Cody Trust Bank and they initiated an issue and  
they distributed sixty per cent of that?

"The Witness: That is right.

"The Court: And this gentleman from Indiana presumably had distributed some part of the sixty or of the forty?"

"The Witness: That is right.

"The Court: Which was it, the forty or the sixty?"

"The Witness: The sixty.

"The Court: I presume that is why these five men allowed themselves to be persuaded to become members of that committee?"

"The Witness: That is right. I am not sure whether Kilmer distributed a lot of the sixty or forty. It may have been both. I am not sure of that.

"The Court: All right. Go on.

"Mr. Woods: Starting in with 1933, you told the Court that steps were taken to get this property reorganized.

566 "Mr. O'Brien: Now, just a minute, if your Honor please. I want to say this, I don't, of course, regard this as relevant to the matter before the Court. I think this is—

"The Court: Well, I will tell you, a Judge is human; the great question in that human being's mind is why, why was this property kept in court needlessly, as it seems, for years?

"Mr. O'Brien: I am perfectly willing to go into that.

"The Court: That is the great question in my mind. I am just telling you frankly. Why was this property, as it seems to me, needlessly—maybe it should have been kept in court; I want to know about it.

"Mr. O'Brien: The Court will have all the information we have got on that. But at the same time I wish to note here it has no bearing on the issue here."

The Witness: The first thing we did was to call the bonds for deposit. The committees are always interested in knowing something about the operation of the property, although it does not concern itself very much with the operation. They want to know that someone is in there operating the property and the property is being used for the proper purposes. We also had a survey of the property made to have information before the committee, to see what the possibilities were of reorganization. Some time early, after the committee was in the picture, this involuntary petition was filed, and we were advised that it was faulty and if a reorganization were attempted through that  
567 proceeding that it would result with the kind of a title that we could not clear and find that we had a merchant-



able title. That proceeding was resisted and, as was here stated, thrown out.

We were willing at all times to negotiate with anyone who was in a position to negotiate, to develop a feasible plan. We did not have sufficient deposited bonds to work out a plan ourselves, without the cooperation of the junior interests, and we were not at any time able to get together on any feasible, workable plan with the junior interests. We solicited bonds as well as we could. Of course, the bonds were distributed, forty per cent by the Chicago Trust. That list was available to us. But the other list was not, and that perhaps explains in part why we did not have a very substantial deposit. We have also heard of trouble, as I said, in the junior interest—

568 I have heard of a controversy over the disclosure of bondholders' lists which occurred about four years ago. I believe in this court. I believe I have heard what the decisions were of this court and the Circuit Court of Appeals with respect to the disclosure of bondholders' lists. I usually find the court has ordered that a list be furnished. I cannot recall whether that was about four years ago but it seems that is about right. We did not have that vehicle available to us at that time.

"Mr. Woods: Now, Mr. Sturm, I have here the transcript from the United States Circuit Court of Appeals, in the case 5,488, which is this Harris *vs.* Tuttle litigation. In that transcript it says here that the deposit agreement under which your committee was operated was dated April 28, 1933."

I have not verified the correct date of the deposit agreement. I have heard that Chicago Title and Trust Company in the foreclosure proceeding in the Superior Court was appointed as receiver. The committee knew that three months after such appointment. The court on the petition of the bondholders' committee withdrew its order, discharged the receiver and had the property turned over to the Central Republic Trust Company, as trustee-owner in possession under the trust deed. This was not done for the purpose of heading off this court getting jurisdiction. That had no relationship to this court and jurisdiction. I have never heard that matter mentioned, those two things together, at that time. As far as I know, from that time until now until this court in this proceeding appointed a trustee there was no court officer in charge of the property.

569 / As to the previous 77B case carried to the Supreme Court I do not know whether the trustee had any part in it or not or whether the committee did that alone. I don't recall that.

Mr. Woods then handed the witness the transcript of record from the United States Circuit Court of Appeals and asked him to look at it and say if he could find anywhere in that document where the City National Bank and Trust Company is named as a party to that proceeding.

Witness: I will just have to assume it is not there if you say it is not there. I don't see City National Bank's name mentioned on the cover. I would not know where else to look for it.

Mr. Woods then requested that Trustee's Exhibit D be marked for identification.

Mr. Woods then requested that Trustee's Exhibit E be marked for identification.

Mr. Woods requested that Court Trustee's Exhibits F, G, and H be marked for identification.

Whereupon the court recessed until 2:00 o'clock of the same day September 22, 1937.

Met pursuant to adjournment to recess 2:00 o'clock, P. M. September 22, 1937.

WILLIAM G. STURM, was further examined and testified as follows:

*Cross-Examination Resumed by Mr. Woods.*

The Witness: Exhibit D is a check for attorneys' fees in the Harris vs. Tuttle litigation. The money came from the trustee's possession account. It was from rentals from this Granada Hotel property. This litigation was 570 carried on as I understand it by the trustee and the bondholders' committee and on the appeal was taken up by the committee. For all practical purposes it was taken up by the committee and the trustee as well as the committee. In these proceedings I did not notice a lot of distinction between the committee and the City National Bank and Trust Company, they were largely one and the same thing. I did not say that whatever the committee does is the act of the bank and whatever the bank does is the act of the committee but in this proceeding it was substantially that. I do not know whether the committee or the City National Bank and Trust Company was made a party

to these proceedings by summons. I believe that they both came in voluntarily and intervened in this court. I think it is perfectly proper to take the bondholders' money and pay for this litigation which was carried on by the bondholders' committee. It was done for the benefit of all of the bondholders. As to pointing to any document or any record that gives authority to take the money that comes out of this property to finance a litigation where the bondholders' committee intervened, I am not well informed about the technicalities of a trust indenture but I have always understood that the trustee should do everything that he feels is proper for the protection of the bondholders, and I think in this matter it acted as it should. The committee cooperated with the trustee in doing it. The reason why City National Bank and Trust Company did not go up on that appeal was to avoid duplication. As to why City National Bank and Trust Company intervened in this court at all, there are some things about court procedure that are too deep for me, I cannot follow all the ramifications of matters of that kind. I undertook to look after the bondholders with advice of counsel in matters that were 571 legal. Generally speaking, a question of whether I would enter a law suit or stay out of it is a business proposition when I was not served with summons. The committee did sit upon the question as to whether they would intervene in this matter. The committee decided they would intervene, they thought it was the right thing to do. I knew that the effect of that was, if successful, that the petition would be dismissed. That was the purpose of it. It was not that it had any effect as to whether the State court proceedings would go on indefinitely. We wanted to get this bond issue reorganized in some way if it was possible. We did not consent in this court to the proceedings because we did not feel we would wind up with a valid merchantable title. The issues would not have been anything. We would have nothing that would do us any good.

"The Court: Do you think you are going to wind up in this court with something valid?

The Witness: I think so; I think so, aren't we?"

The Witness: As to the withdrawal of our objection here and why we did not do that before, as I understand it, the proceedings now are quite a bit different than they were before. I understand the involuntary petition filed in these proceedings came in on an equity receivership matter which was not there in the prior proceedings. Later there was

a voluntary petition filed here and we were very happy to have it right in this court so the property could be reorganized and finally wind up so as to give whoever had it a good, merchantable title. We had other cases that were kicked out, if I may use that expression, because of the decision in the Granada case, where I was very sorry to have them go out and I wish they had stayed in court and be cleaned up.

572 "The Court: With the same energy protecting the jurisdiction of the court in the former proceedings, if you had put the same energy into perfecting the jurisdiction of the court that you did disputing it, you might have helped along; what do you think about it?

The Witness: I think we used everything we knew of that was available to me.

The Court: To prevent jurisdiction?

The Witness: I don't know what could be done to perfect jurisdiction.

The Court: You did not know anything?

The Witness: No, frankly, I did not.

The Court: Surprised to get in?

The Witness: Well, we have been surprised to get—

The Court: No, no. At that time, did you do anything,—what did you do?

The Witness: In a matter of that kind, frankly, we have to rely largely upon the advice of counsel because that is entirely too deep for a layman.

The Court: Well, did you or did you not?

The Witness: I cannot say that we did not or did. But there was nothing suggested at that time as being available and making it possible for us to get in that particular proceeding.

The Court: That is, without limiting it to that particular proceeding; did you consider at all whether or not you could get into court where you could get your case on without getting the consent of everybody—

The Witness: We did with this issue.

The Court: What did you do at that time?

The Witness: We had looked for some available means to reorganize the first bond issue. In fact, it has not  
573 been reorganized, has not been now; that is because we have not found anything we could do possibly for us to start it prior to now. That is our general position, and that is our particular position in this case.

The Court: That is what I am asking you to tell me, what you did; what did you consider?



The Witness: We negotiated for—with the junior interests to find some common ground, to find a basis of reorganization. We did not have enough bonds in our own committee to make it possible to go out independent of every other person that might have an interest. It was generally reported that people that had junior interests and also holders of certificates of deposit; there was nothing that was possible or practical that we could find that made it possible for us to reorganize this bond issue, and when the proceedings got into this court we were very happy to be here because we thought we had a vehicle at that time that made it possible to get a reorganization through, the first decent opportunity we have had to reorganize.”

The Witness: I do not understand it to be a fact that on May 17th, the day this court entered its order and appointed its trustee, that the City National Bank and Trust Company filed in this present proceeding we are now in, the very same objections which had been filed in the former proceeding which went to the Supreme Court. I understand that the objections went to something different than that.

“The Court: At any rate, you are the man whose judgment was used to determine what you should do, were you not?

The Witness: Well, I was one of the committee, and I am in charge of the reorganization department over there, your Honor.

574 “The Court: Some witness said you said you were the man to determine whether or not they should be gotten out.

The Witness: Yes. It is important, Judge, to get these properties reorganized, that is correct.

The Court: What did you think; did you think this property was making progress in receivership?

The Witness: It was making some progress; not as much as I would liked to have seen.

The Court: Do you think it was going better when it was in the hands of the real owners?

The Witness: Yes.

The Court: Do you think so?

The Witness: Yes.

The Court: Maybe you are making a mistake, to take it out now?

The Witness: I don't know. Time only will answer that, your Honor; I don't know.”

Mr. Woods requested the Court Trustee's Exhibit I to be marked for identification.

575 "The Witness: There has been a real under-current in this whole situation that perhaps is very hard to understand, to anyone. This property perhaps is regarded as somewhat different in ownership than an individual or corporation that is just controlled by an individual. There are under-currents trying to get control of this property at a very nominal, a small price; and he will obtain, as far as we could sense, through a trade and buy our bonds and if they do reorganize, get those bonds at a very small price. The most of the activity I have heard in this issue the last year. But to that point you are more than reorganized, through no fault of ours; that is something we have to contend with and meet; there was this whole time we have had the matter in charge.

"The Court: It is not at all surprising, the matter allowed hang around for three or four or five or six years; that is not at all surprising. That is the natural result of that sort of thing.

"The Witness: Well, I don't think it is true of the work we are doing over in our office, your Honor. My job is to get these things done and we do have a good, big part of our job completed, actually completed, and new securities delivered.

"The Court: The actual result of keeping up a business of this kind, an enterprise of this kind, for six years in court is to induce somebody to try to steal it.

"The Witness: I will assure you it was not our committee or anyone connected with the bank.

"The Court: I am not insinuating someone tried to steal it, but just tried to keep it in court.

576 "The Witness: I think some efforts have been directed, but that was back some time. We have tried to prevent it, and so far we have succeeded."

(Mr. Woods then handed Court Trustee's Exhibit I for identification to the witness, being a certified copy of appearance of City National Bank and Trust Company of Chicago in these proceedings on special limited appearance, setting forth in substance the possession by City National Bank and Trust Company, as trustee in possession.)

The Witness: I have no way of knowing whether or not by that document City National Bank and Trust Company filed exactly the same objections that had been litigated in the preceding 77B case, but I have been informed that such

objections are not identical, as the important question in the prior case was the question of jurisdiction; and also such objections went to the question of who should remain in possession of this property. When the voluntary petition was filed, that objection was waived because we were very anxious to go forward with the reorganization and perfectly willing that it should go forward in that manner.

(Mr. Woods then requested Court Trustee's Exhibit J to be marked for identification, which is a transcript of the record from the United States Circuit Court of Appeals for the Seventh Circuit, in case 5488.)

(Mr. Woods then asked the witness to look at page 11 and compare it with the document filed in this court, being Court Trustee's Exhibit I.)

The Witness: I would have no way of answering your question as to whether I think there is any substantial difference between the objections filed there and the 577 ones filed here. I am not a lawyer and the technicalities of these petitions, while I understand what they generally say, I cannot always point out the real technical difference between one petition and another.

(Whereupon Court Trustee's Exhibit I and Court Trustee's Exhibit J were offered and received in evidence.)

The Witness: I think it just happened that I was originally to be a member of this Granada bondholders' committee. We have a reorganization department and any time it was necessary to give attention to a defaulted bond issue invariably the same people were on the committee. In this case, because every bond issue was sold by the Cody Trust, because they sold 60% of the issue, three members were picked outside and two within our organization. It was logical that Mr. Tuttle and I would be those two people.

We had an issue of the old Central Republic Trust Company that was in trouble. There was no vehicle, no personnel or any one to give it attention at all; and we formed committees in all of those cases and we did so in this case, so that there would be some unified effort on the part of the bondholders to protect themselves. That was the only vehicle we knew about to make it possible to do that. Central Republic Trust Company did not have some kind of arrangement with the Cody Trust Company by which it would handle these issues. We had no contract with anyone. These issues were being serviced by the Central Republic Trust Company as trustee. When an issue defaulted certain of the personnel around the bank was picked to

form a committee to take care of that as a committee. The bank furnished the committee and it furnished the personnel and facilities to make it carry on. It became the depository. If there were any fees allowed the committee they go to the bank. The reorganization department was not organized to make money out of defaulted bond issues. It was organized to furnish the service to people who had defaulted certificates. It did not try to make money out of it. We would be happy if we break even when it is completed. We do not try to lose it. We are trying to break even. It has been our objective from the very beginning. In trying to break even we do not try to get as much as possible out of each issue. We have a pretty fair idea what it costs and we charge on that basis. If that will cover our loss out of pocket when a job is completed, the bank will be very happy about it.

City National was not organized on October 5, 1932, to salvage what they could out of the Central Republic Trust Company. It was organized to take over the deposit liability of the Central Republic and then it subsequently acquired much of the trust business at the Central. I presume that is one of the things, that it was intended from the beginning to take over whatever trust business the Central Republic Trust Company had that was worth taking over. I had nothing ever to do with that at that time. As far as I know, there is only one contract that was between the City and the Central. Mr. Leonard in our organization would know if there had been a contract between Cody Trust or Chicago Trust and the Central Republic Trust Company by reason of which whatever benefits there were under that would come over to the City National under its contract with the Central Republic Trust.

The members of this Granada bondholders' committee have taken nothing whatever for themselves personally out of the Granada Hotel receipts. No money has been used for the payment of any other bills of the committee, aside from the Harris vs. Tuttle litigation. Central

Republic did finance the committee up to a certain point; but the City National did finance entirely on the main Granada matters.

The City National, with its officers and some officers of the Cody Trust Company, and some gentlemen down in Indiana, formed a committee to deal with this Granada situation. The committee perhaps suggested that City



National be nominated to be a trustee in the trust deed. My recollection is that the committee filed a petition in the state court and on that petition the state court entered an order by which it said that the City National Bank and Trust Company was the new trustee in the trust deed. City National Bank and Trust Company has so held themselves out since that time.

As to your question that, in other words, that goes around in a circle; the City National appoints a committee and the committee appoints the City National, I don't know whether that is a circle or not. I think it was the logical and proper thing to do.

I had nothing to do with procuring the resignations of these prior trustees and resignation of the Chicago Title and Trust Company as prior successor trustee. It was done around our bank some place in cooperation with the counsel here. I don't think, in substance, the City National appointed and elected itself the trustee under this trust deed. The committee petitioned for the appointment. The bank appointed Mr. Riddle and Mr. Kilmer on the committee. I, as a volunteer, getting together the people, selected the people for the committee who had some contact with people who bought the bonds. We just happened to meet together and appointed the members of the committee. It is about the only way I know of appointing a committee. I don't know that Mr. Leonard particularly suggested to me and Mr. Tuttle that it would be a great idea to organize this committee. If he told me to do that I would do that. If he told me to go to the committee and have the City National Bank put in as trustee in that trust deed I would go and do it.

I cannot recall what was done with the money that was collected from this property during the period that the Chicago Title and Trust Company was receiver of the net rents; that is, between August 11, 1933, and January 12, 1934.

"The Court: Did you approve the issuance of this receiver's certificate that was outstanding?"

"The Witness: The so-called—that came out of the Pick litigation? Did I approve it? I think I did.

"The Court: Was that for the benefit of the bond holders?"

"The Witness: I think there is no doubt about it. You could not run that hotel without furniture, your Honor. It was a very serious matter to the Granada to keep that building furnished so he could operate it. I think without furniture it would have been ruination."

"The Witness: I did know that this Granada hotel property furnishes hot and cold water, heat and refrigeration to two other hotels. I did consider the desirability of reorganizing the three of those properties. My best recollection is the Arlington and Lincoln Park Manor, that the committee personnel is composed entirely of people in the City National Bank. We have considered reorganizing these three properties, together, but we did not regard it, with the different set-ups, until it is shown that it was feasible or practical or that it could be done, so we picked out the Arlington singly and started on the Arlington, and that was well on its way before these proceedings were started, and as soon as the proceedings were started we grasped the opportunity to apply to this court. We would be very happy to do the same with the Lincoln Park Manor, but there are some problems that we still have to work out.

582 The Arlington could not be reorganized without a heating system. We are in position to install a heating plant. The other building is without a plant. All of these matters presented serious problems. They can be operated as separate units. It is a matter of opinion whether or not it is a less difficult business problem to unite those properties than to have new heating plants or make new arrangements about heating. I think it is very feasible and practical to have each property stand by itself and I think for the purpose of ultimate liquidation that may work out much better that way than they would as a united one. As to whether or not that would delay the bondholders several years before they got any returns, there is nothing to prevent the selling of this property after you have gotten the titles perfected, and that is the best way and the quickest. The selling of the property is a thing that bondholders, in my experience, prefer. I don't think they will have to wait until this indebtedness is paid or borrow the money on long term and use the excess earnings for the purpose of paying dividends to the bondholders. I think it is five or six years since the bondholders have had any income from any one of those properties.

I have been in the reorganization business since 1932 and prior to that was in the real estate loan department of Central Trust Company of Illinois, exclusively handling reorganizations.

583 I believe I know how it was that the foreclosure decree in the state court was entered on December 18, 1936 and the proceedings held were filed in Danville on

April 19, 1937, just one day more than four months. There was an action started against the corporation and judgment secured and they went in and started what I understand is called an equity receivership, and on that day they filed an involuntary petition down at Danville. I know nothing about how it happened that it was one day more than four months. I knew about it after it happened, but not one minute before, was no party to it and had nothing to do with it.

The Trustees fees, masters fees, counsel fees and all expenses that were to be allowed in the state court had been considered by the Committee. I would not say that they were considered particularly in this case—the Bar Association usually governs fees for attorneys and trustees fees are pretty well established. I feel that the limits fixed by the Bar Association are fair and absolve the Committee from not doing anything further about it. We have no vehicle for cutting fees below what the Bar Association fix. I understand in the state court the attorneys petition for fees and if they are in line with the Bar Association they are usually allowed. We did not make any objection about such allowance of fees in the state court.

I am not aware as to whether here were any objections filed to the Master's report in the foreclosure case. If there were no objections filed to the Master's report, I would not know whether a fee of \$2550 to the Master was a reasonable fee. I would have to see the record 584 and know what the master had to do. I cannot just express an offhand opinion here. I did not investigate this matter.

Mr. Woods then called attention to the court trustee's Exhibit E.

The Witness: That speaks for itself. That is a check to Robert C. O'Connell, Master in Chancery for \$2552.86. I don't recall that an application was made to this court in the Harris vs. Tuttle litigation to have this court pass on that fee before it was paid. I have no recollection that this court did not allow that fee and continued the matter and never passed on it. I was a litigant in that case and my name was in the record. As to whether I read the record in any way to be informed about the litigation, we have counsel to take care of matters in court, wherever they think it is necessary, or whenever we think it is necessary they consult with us and advise with us we give them advice. The matter of proving up fees with the mas-



ter I would regard as a very routine matter in the matter of a foreclosure and even in a bond issue.

I casually recall that all the time this *Harris vs. Tuttle* litigation was going through the mill in this court, the Court of Appeals and the Supreme Court of this United States there was another 77B case filed in Danville brought to this court which remained in this court pending until May 17, 1937. I knew such a case was pending and that nothing was done about it.

"The Court: Where was that case pending, before what judge; on whose calendar was that case?"

Mr. Woods: It was on your calendar, your Honor.

585 Mr. O'Brien: No.

Mr. Woods: You kept it here until May 17; that day you had before you three petitions.

Mr. O'Brien: I beg your pardon counsel, the case was pending at Danville before Judge Lindley on a motion to dismiss, and Judge Lindley transferred the new petition up here; transferred the old and the motion with it. It was held in abeyance pending the outcome of the old Granada case. The case went to the Supreme Court. The basis of the objections of jurisdiction was the same as we laid in the Granada case."

Mr. Woods: Well, the point I wanted to bring out was that the case was pending in this court and this witness knew about it.

The Court: Yes.

Mr. Woods: His counsel knew about it while they were going ahead with other court proceedings.

Mr. O'Brien: That is admitted; you need not bring that out."

*Examination by Mr. O'Brien.*

Mr. O'Brien called the attention of the witness to court trustee's Exhibit J, at page 56, paragraph reading as follows:

"The Trustee contends that there should be no restraining order against the foreclosure proceedings in the state court. Those proceedings have been pending for some 4 or 5 years and have not yet reached a final decree. I am advised by counsel that the ultimate effect of a decree would be to bar certain parties claiming some interest. It seems desirable therefore that these proceedings be  
586 allowed to proceed to a decree. Such prosecution may result in the saving of time and expense in marshal-



ing and liquidation of claims. However, it is desirable that no sale be had until it can be determined what is to be done under the present proceedings. I take it that counsel will not proceed to sale without further communicating with the court."

The Witness: I was generally familiar with that portion of Judge Lindley's opinion as rendered in the original Granada case.

Mr. O'Brien called the attention of the witness to the copy of the decree of sale entered December 18, 1936 in the foreclosure proceedings and referred to page 17 of this decree.

The Witness: The amount of the trustee's fees allowed was \$2560, and the solicitor's fees are \$9000.

I am not positive, your honor, but I believe that we charge 4% for collecting rents. Mr. Hubbard is in charge of that part of the operation. As far as I know there was no commission paid to anybody in respect to renting or collection except the 4%. 4% is the overall charge.

Mr. O'Brien then requested City National's Exhibit 1 be marked for identification, being abstract of record in the Supreme Court of Illinois in the case of William A. Thuma, Complainant vs. Granada Hotel Corporation, a corporation, et al., Defendants.

Mr. O'Brien called the attention of the witness to City National's Exhibit 1 for identification.

587 The Witness: The photographs of Exhibits appearing in this Exhibit correctly describe the items in controversy in this suit. It depicts such items as removed from the specimen apartment of the premises.

Thereupon Mr. O'Brien offered CITY NATIONAL'S EXHIBIT 1, which document was thereupon received in evidence.

The Witness: The Receiver's Certificate of Indebtedness which I have referred to was that issued for this particular furniture referred to in these pictures—the so-called "Pick" fixtures. They are fixtures consisting of carpets, ozite, in-a-door-beds, kitchen cases and china cases. It was for the purpose of acquiring those items from Albert Pick & Company and its assignees at the termination of the litigation reflected in City National's Exhibit 1 that the Receiver procured money on security for his Certificate.

I understand this first mortgage issue was underwritten by Cody Trust Company and Chicago Trust Company. I was not identified with either one of those companies. The

Chicago Trust Company consolidated with the Central Trust Company of Illinois in July of 1931. At that time the Chicago Trust Company was original Trustee under the first mortgage indenture and through the consolidation the Central Republic Bank and Trust Company succeeded as Trustee, and that bank later changed its name to Central Republic Trust Company. The Central Republic Trust Company went into receivership in November, 1934, and it was in April of 1934 that the Central Republic Trust Company took possession of the property as Trustee from the state court receivership. That was on stipulation of all the parties.

As I recall, the payments aggregating \$7500 on account of the receiver's Certificate of Indebtedness were made by the receiver, and at the time that the stipulation was entered into the agreement of the indemnity insurance company, holder of the Certificate through the surrender of possession by the receiver, was procured. In the order directing the surrender it was provided that the Central Republic Trust Company assume payment of the receiver's Certificate of Indebtedness.

At the time of the settlement of the Pick fixture situation, the Central Republic Trust Company procured a chattel mortgage on all of the personal property in the Granada. Central Republic Trust Company, or its predecessor in trust, prior to that time, did not have any tie in on the furniture, new or old, in the Granada. And, the payments made by Central Republic Trust Company, after it took possession subsequent to April, 1934 to the Continental in reduction of the conditional sales contract were made for the purpose of protecting the security of the chattel mortgage so obtained.

"Mr. O'Brien: In his objections the Trustee refers to the fact that the taxes on the Arlington are paid or substantially paid, whereas those on the Granada are not; do you recall that?"

The Witness: I don't recall that. That was stated while I was here today.

589. Mr. O'Brien: I say in the written objections—

The Witness: Oh, yes. Well all right I do recall it.

Mr. O'Brien: Now, can you tell the court any reason that you know of why that situation exists?

The Witness: Well, the Arlington, in the first place, has been a little better earner than the Granada. It did not have the problems—

Mr. Woods: I object to that, if your Honor please. I want him to produce the figures.

The Court: Sustained.

Mr. O'Brien: Well, I—go ahead.

The Court: It is his conclusion.

The Witness: What do you want?

Mr. O'Brien: The statement that it is a better earner is stricken, but proceed from there on.

The Witness: Oh, you have got me confused now, just where I am out of order here. You say that it is a conclusion, your Honor? That is a better building—

The Court: You say it is a better earner; that is a conclusion.

The Witness: Yes, the Arlington did not have the problems tied up with it that the Granada had and produced a better net earning.

Mr. Woods: I object to that and move to strike it, 'It produced a better net earning.'

The Court: Strike it.

The Witness: Read the question and let me see what the question is, please.

(The question was read as follows:

590 'Q. Now can you tell the court any reason that you know of why that situation exists.'

The Witness: What situation?

Mr. O'Brien: That the taxes on the Arlington are paid whereas they are not on the Granada.

The Witness: Well, the income was adequate in the Arlington to pay the taxes and it—

Mr. Woods: I object, your Honor.

The Witness: And they were wholly inadequate in the Granada.

Mr. O'Brien: If the court please, after all I am not here on any technical aspect of this matter. I understood the court—that is, not on this point. I understood the court here this morning to say that he wanted to know the reasons for some of these things which I think are entirely collateral to the matter here. I am trying—

The Court: Of course, that does not get us anywhere.

Mr. O'Brien: Well—

The Court: If the witness showed that he had so many apartments and a gross income brought in from it and operating expenses were so much, then we would know. But just to say one is a better earner than the other, that does not tell us anything at all. The same man is running



the same two properties and making contracts between them.

Mr. O'Brien: Well, I—

The Court: Because he testified one was a better earner than the other—that is all.

591 Mr. O'Brien: I am not interested in the earning situation.

The Court: I want to know what was done with the earnings in the case of the Granada. That was not required in the case of the Arlington."

The Witness: Much of the income from the Granada went to acquire this furniture and the fixtures. The furniture in the Arlington was tied in as additional security for the loan from the beginning. Taking the Lincoln Park Manor, I have heard of Eugene Gehn. I never met Mr. Gehn, but I have heard of him many times. I understand he was the man who held the mortgage on that property and he foreclosed it and acquired title to it in that method. That was some years ago. The Central Republic Trust Company was trustee under that first mortgage also. It filed a bill to foreclose. It did not have the furniture tied in as additional security and it does not now. The Committee has no interest in the furniture in the Lincoln Park Manor. The tax situation of the Lincoln Park Manor is very bad. It is conservatively in excess of \$25,000. Logan Mullins, the Receiver, is operating the Lincoln Park Manor. I understand that some time within the last year or perhaps a little more than a year he has leased the entire premises. I understand there is \$800 a month being paid presently under the lease. I understand Mr. Mullins has been in as receiver for four or five years. I imagine the Committee has on deposit about 75 or 80% of the bonds.

In 1933, at the time the Committee was organized, the financial setup on the Granada was substantially the same as it is made to appear in these proceedings. There 592 was a first mortgage, \$25,000 of which is subordinated; a second mortgage of \$360,000. The City National still has \$30,000 of the second mortgage bonds, which, as earlier represented here, are to be turned in for cancellation.

In April of 1934, the unpaid balance on the conditional sales contract held by the Continental was \$19,400. That balance was reduced subsequently at the rate of \$400 per month.



I do not believe that during the years 1933, 1934 and 1935 it would have been possible to reorganize the Granada any place, in or out of court. There was a very bad tax situation. We had a very low deposit of bonds. We were not able to get together with the people that controlled the title in the junior interest.

I have not checked whether the taxes are any better now than they were last year. They may not be and perhaps they are not very much better than they were in 1934. I suppose they are somewhat better each year; that is all but not substantially.

I think we have some additional bonds on deposit today that we did not have last year. I think before the plan was sent out we had 50% or a little more, and I think now we have just enough to put this plan into effect in this form. We were building up a deposit from 1933 on, but perhaps after the first year most all those bonds were deposited and not many after that were deposited.

I have not attempted to figure the value of this property. Perhaps it is worth \$200,000 or \$250,000. The amount of the first mortgage bond issue is \$480,000 or \$485,000.

593 "The Court: Where are your different objections, where are the obstacles and where have they disappeared to in the last several minutes, to a reorganization?

The Witness: To be supervised by this court, to make it possible.

The Court: And they have been for two, or three or four years?

The Witness: No, we have not found a vehicle, we had no way to come in here. The other parties did not want to come in. We were very glad to come in here, we would have grabbed that opportunity years ago.

The Court: But you did not want to come here?

The Witness: People in control bringing it in; we told the debtor to bring it in."

I think the control of the stock of the corporation in 1933 was in Cody Trust or some people associated with it. It was reported that it was then acquired by a syndicate. Up until the time that the voluntary petition was filed in this district the corporation was never willing to file a 77B petition. I discussed it with a man by the name of Wendstrand. The only party that I knew of that had any sort of interest in this property. I understand he controlled the stock.

"The Court: You were bailing him out on his liability on purchase of the receiver's certificate, did you know that?

The Witness: We certainly did not figure that.

The Court: You did not know that?

The Witness: We had the chattel mortgage and we were protecting that chattel mortgage, your Honor.  
594 I don't know what benefit—

The Court: I say you could control Mr. Wendstrand but at the same time you were bailing him out, paying him out of the receiver's certificate which he purchased, did you know that?

The Witness: I didn't know I was protecting him. I thought I was protecting the bondholders when I was doing that; protecting the operation of the property, making it possible for this property to operate. I certainly had no interest at any time to favor Mr. Wendstrand or aid him in any way.

The Court: I was just wondering if you made him mad?

The Witness: Made him mad?

The Court: Yes.

The Witness: I would not have cared if he had gotten mad.

Mr. O'Brien: This petition was filed after that petition at Danville, that new petition at Danville?

The Witness: Yes.

The Court: You did not know Mr. Wendstrand was obligated to purchase that—buy that Receiver's certificate if he did not pay it off?

The Witness: No I did not know that. I don't know that now if it is a fact.

The Court: That is a fact isn't it?

Mr. Woods: I will offer the evidence, your Honor, in just a minute.

The Witness: I don't know that it is a fact; maybe it is; at least I have forgotten if I did know it.

595 The Court: I am just calling attention to it because I can't see why you did not take this out of court three years ago.

The Witness: No way to do it, your Honor.

The Court: I have not seen the reasons.

The Witness: There has just been no vehicle provided up to this time."

The Witness: I had a conversation in December of 1936 and following, with Mr. Wendstrand, about a reor-

ganization agreement on a 90-10 basis. Wendstrand reported to represent in the way of junior interests everything we needed. At about the same time I had some conversation with Mr. Ludwig on behalf of the Ingersoll group. Mr. Ludwig came in and shopped around in the same manner. We stated that the Committee was willing to start him on an all stock plan whereby the union interests would get 10% of the stock and the other bondholders to receive the other 90%. They talked about it but I saw no performance. As to bringing about performance, we were willing to sit down any time and have him bring in what he represented to control and we would have immediately drawn a contract and gotten out a plan as we were anxious for a plan.

Mr. Wendstrand said that he had in mind at that time that he would like to join in a plan of that kind. He also at one time or another indicated that he would like to buy the bonds, but at this discussion there was no discussion about the purchase of the bonds. There were several discussions, however, at other times in which Mr. Wendstrand indicated what he wanted to do was buy Committee bonds. My recollection is that the price mentioned was around 20¢. The Committee was not willing to sell the bonds at that price.

596 "The Court: Well, now you see what you did; just by delaying this proceeding; delaying this proceeding you reduced the money price of those bonds to 20¢ that is all that evidence shows; you were in a commanding position; you had 50% of the bonds; you could have gotten this case out of court if you wanted it done.

The Witness: We could not foreclose it, your Honor. We couldn't buy it in at the sale.

The Court: You could have gotten it out, it seems to me if you really wanted it out, and because of your failure to get it out somebody will buy the bonds all at 20¢ on the dollar.

The Witness: I will certainly lend no assistance to that your Honor.

The Court: You did not get the property out of court.

The Witness: We did not have any way to come into the court."

The Witness: I am in charge of the Reorganization Division of the bank. I have had occasion to deal in Chicago with about 425 issues. We have about 70% of those actually reorganized and have plans out on between ten

and fifteen percent of the remainder. Quite a few of them have been concluded in the Federal Court. We have had plans in the Federal Court almost immediately after the enactment of the act. That includes the Pine Grove issue, The Austin Hotel, the first issue on Griswold & Walker, and others. In all of those cases Central Republic was Trustee. In a very few cases receivers were in possession operating the properties pending the reorganization proceedings. The properties were mostly operated by the 597 trustee in possession, either the Central Republic or the City National. The reorganization of the 70% or 75% of the properties reorganized has been spread over a period of the last four years. There was no reason other than those to which I have referred why the Granada was not reorganized and gotten out of court in the same way.

We have a staff which helped reorganize those properties. Mr. Tuttle spends all his time in connection with the reorganizing of companies and Mr. Leonard gives considerable of his time and attention to such reorganization, and we have a staff of about 25 or 26 people who spend all their time on reorganization work, did nothing else.

I understood there were some objections filed to the approval of the involuntary petition. I may be mistaken.

"The Court: I thought your firm made objections—did you make objections Mr. O'Brien?

Mr. O'Brien: No, this was the only thing we filed in this case (indicating document).

The Court: Did you object to turning over the property to the trustee?

Mr. O'Brien: Yes.

The Court: And after the course of two or three days you or somebody else came in and said you were not going to press that petition?

Mr. O'Brien: We came in to tell you of our conclusion, yes.

The Court: I told you I was going to try to take possession; and after two or three days you came in and told me that you were not going to press your petition; 598 isn't that so Mr. O'Brien?

Mr. O'Brien: That is substantially so, your Honor. We said we would waive the point in view of the fact that the court—

The Court: The court was stubborn.

Mr. O'Brien: The court said if we prevailed on the point he would vacate the order, etc. and dismiss the proceedings.



The Court: Yes, I think I did tell you that.

Mr. O'Brien: Yes, that is right. I don't want to take any further time on that—that is all."

*Cross-Examination by Mr. Woods.*

The Witness: I do not recall that I ever offered any objections to the payment of this \$7500 on the receiver's certificate. I did not make any objection to the payment of the money on the purchase of personal property from the La Salle Furniture Company. As to any inquiry as to whether there was any authority in the trust deed by which the Trustee could spend money to buy personal property, as I understand matters of that kind, we had a chattel mortgage at ~~that time~~ and it was necessary to protect the chattels, and in order to do that these payments had to be made. I think as a collateral matter the chattel mortgage being additional security that the trust deed gave ample authority to do that.

599 Mr. Woods then showed the Witness the Court Trustee's Exhibits K, L, and M, which had been marked for identification, Court Trustee's Exhibit K being bond circular of Cody Trust Company with respect to First Mortgage Bonds; Court Trustee's Exhibit L being memo of understanding between Chicago Trust Company and Cody Trust Company in re Granada bond issue; and Court Trustee's Exhibit M being application of bond in judicial proceedings to Indemnity Insurance Company of North America.

600 The Witness: As to Court Trustee's Exhibit K, "I had nothing to do with this circular, but I may have seen a copy of it." I was not particularly interested in what had gone before but was interested in what was current and what had to be done to it. I knew what the bondholders had bought by being familiar with the property and knowing where it was located. Instead of looking at the prospectus under which the bonds were sold I preferred to have the people in our employ gather information concerning the property. I did find out what the bondholders purchased, but I did not do it from the circular. I was interested in getting the information first hand. I did think the information in the circular to the bondholders buying bonds was important but I was engaged in going something for the bondholders. Whether the circular said there were 22 or 92 apartments I was not

concerned. I never had anything to do about that. If that circular described not only the physical property and the real estate but also described all the personal property in it and gave its value as \$80,000, I think that was what the bondholders thought they purchased. I know that it was represented in the circular that they bought the personal property when they bought the bonds, but they did not get it. We got part of the money to buy this personal property, that is \$11,000 or more, from the Indemnity Company and the Receiver's certificate—\$13,000 came from the trustee in possession. We were paying for it for the first time as far as I am concerned. According to the circular the bondholders had already paid for it.

As to whether or not it was paid for twice, you can draw your own conclusion, I don't know. I did not make any effort to make the Cody Trust Company pay for the receiver's certificate because we did not think it was collectible. As far as I can recall I did not make any effort to have the officers of the Cody Trust Company pay for the receiver's certificate.

Document marked Trustee's Exhibit L was handed to the witness.

The Witness: I cannot recall that I have ever seen that document. I would not be surprised if you told me that that was furnished to you by my counsel and came out of the files at the City National.

The property was responsible for the payment of the receiver's certificate at the time it was given. I knew it was necessary to have the furniture and the only way I could do was to get this chattel mortgage; To make it possible to get the chattel mortgage there had to be a settlement of this claim which made it necessary to give this receiver's certificate.

I didn't take my own money to do it because it was a job we were doing for the bondholders. We had authority under our chattel mortgage and under our trust deed coupled together to do this. I presume the bondholders did not sign the chattel mortgage. I think the bondholders are bound by the indenture and anything that we have collateral to that indenture securing the bonds. I think it was utterly essential to protect and preserve the interests of the bondholders to get that chattel. I think that was good business and was absolutely necessary and essential.

The witness was then handed Court Trustee's Exhibit M.

The Witness: I cannot say whether I have seen this document or not. I no doubt heard that by this indemnifying agreement Elof Wenstrand, Hiram S. Cody 602 and Lewis W. Riddle agreed to purchase that receiver's certificate from the insurance company unless the trustee paid it.

We went ahead and paid out the money as that was the only way I knew of to protect the interests of these bondholders and keep the furniture of that hotel so we could operate it as a hotel. I have never inquired as to whether a receiver's certificate is a commercial obligation under which a suit can be filed to recover the amount. I assumed that the receiver's certificate gave the holder a prior claim on the income from the property or had the effect that it would have to be paid out of the income.

Mr. Woods then caused the Court Trustee's Exhibit N to be marked for identification, being a typewritten copy of the receiver's certificate and handed the document to the witness and requested the witness to look at it.

The Witness: I have seen that document before. The witness then read from the document as follows:

"Under and by virtue of the order of the Superior Court on the 11th day of August, 1935, in said cause last aforesaid, and constituting by virtue of such order a valid and subsisting first and prior lien upon the real estate and the premises hereinabove described or the proceeds of any sale thereof \* \* \* subject only to the lien of the unpaid general taxes and upon the rents, issues, income, and profits, however, subject to the prior lien of the Central Republic Trust Company, as trustee, under trust deed recorded," etc.

"to the extent of \$8500 of the first rents collected."

603 The Witness: I know there are unpaid taxes. I believe that \$8500 in taxes were paid from the time that document was made and we filed this certificate. That is exactly as I interpret it; I think that is exactly as it was intended. The provision as to the \$8500 was put in the certificate to reduce the taxes by that much before we paid anything on account of this receiver's certificate. My idea is that where the taxes were reduced that much that provision would have been complied with. It is not a fact that the provision as to \$8500 was put in the certificate to protect the trustee and the trustee's counsel in order that they might be paid before the receiver's certificate was to be paid.



Thereupon, an adjournment was taken until Thursday, September 23, 1937 at the hour of eleven o'clock A. M.

Met pursuant to adjournment Thursday, September 23, 1937 at eleven o'clock A. M.

WILLIAM G. STURM resumed the stand and testified as follows:

*Crc.'s-Examination Resumed by Mr. Woods.*

The Witness: I have certain vouchers and debit tickets which you asked me to look up (the witness thereupon produced certain documents and handed them to Mr. Woods).

Mr. Woods thereupon had Court Trustee's Exhibits D, E, F, G, and H and D-1, E-1, F-1, G-1 and H-1 marked for identification.

Mr. Woods handed the Exhibits to the witness.

The Witness: These are photostatic copies of vouchers on which checks were drawn. They were all authorized by proper officials of the bank. Moneys to pay these checks were taken out of the Granada funds held by 604 the trustee-in-possession.

Mr. Woods then offered in evidence the Exhibits which were received.

COURT TRUSTEE'S EXHIBIT D being photostat of City National check dated March 13, 1936 to Defrees, Buckingham, Jones & Hoffman in amount of \$3,857.79.

COURT TRUSTEE'S EXHIBIT D-1 being photostat of debit slip dated March 14, 1936.

COURT TRUSTEE'S EXHIBIT E being photostat of cashier's check of City National dated February 6, 1936 to Robert C. O'Connell, Master in Chancery, in amount of \$2552.80.

COURT TRUSTEE'S EXHIBIT E-1 being photostat of debit slip dated February 7, 1936.

COURT TRUSTEE'S EXHIBIT F being photostat of City National check dated February 23, 1937 to Indemnity Insurance Company in the amount of \$511.01.

COURT TRUSTEE'S EXHIBIT F-1 being photostat of debit slip dated February 23, 1937.

COURT TRUSTEE'S EXHIBIT G being photostat of check of City National dated May 3, 1934 to Continental Illinois Bank and Trust Company in amount of \$2,465.



COURT TRUSTEE'S EXHIBIT G-1 being photostat of debit slip dated May 4, 1934.

COURT TRUSTEE'S EXHIBIT H being photostat of check of City National dated September 22, 1936 to Indemnity Insurance Company.

COURT TRUSTEE'S EXHIBIT H-1 being photostat of debit slip dated September 23, 1936.

Mr. Woods then had marked for identification COURT TRUSTEE'S EXHIBIT C-1, which Exhibit was offered and received in evidence.

605 Court Trustee's Exhibit C-1 is a pamphlet which contains photographs of certain operations of the building.

The Witness: I have seen a Granada bond. I have forgotten who the actual signers were. I think Wenstrand was one of the guarantors of the bonds.

"Mr. Woods: You stated yesterday that you thought you remembered you had seen this Exhibit M which is an indemnifying agreement signed by Wenstrand and indemnifying the Indemnity Insurance Company of North America for going on the \$40,000 bond in this court in the Pick litigation, and for repurchase of the receiver's certificate; you stated you had seen that document before didn't you?

The Witness: Yes, I thought I had seen it.

Mr. Woods: Now, did you think it was correct to use the bondholders' money to redeem Mr. Wenstrand's obligation.

Mr. O'Brien: I object to that.

Mr. Woods:—on the bond?

Mr. O'Brien: If the Court please, the witness has not said he used any bondholders' money to redeem Wenstrand's obligation, and there is no—and it is not the fact and there is no such thing in the record.

Mr. Woods: This man has testified, your Honor, that in his opinion this property is worth \$200,000; but a million dollars of obligations; if the money did not belong to the bondholders I would like to know who it does belong to.

The Court: Let him answer."

The Witness: I don't believe I was discharging Mr. Wenstrand's obligation and I thought the use of the money was entirely in the interest of the bondholders to protect the chattels under that chattel mortgage. I  
606 don't think that it released anybody. To my knowledge I did not ask Mr. Wenstrand to pay off that re-

ceiver's certificate and I do not recall that I asked him to pay off the lien which Pick had on the furniture. I knew he claimed to have an interest in the property and I presume in the furniture too.

I never talked to Mr. Wenstrand about paying off the receiver's certificate. I did talk with him about a reorganization. I was familiar with his affairs in the sense that I believed him to be wholly unable to meet the obligations.

Wenstrand claimed to have an interest in the corporation. He stated he had control of all the junior mortgages. I don't know whether that was a fact or not. I dealt with him because I felt he had an interest in the corporation and that he was a proper person to deal with.

Within the last few months and prior to these proceedings, I was attempting to deal with him. I had a question about that at all times, about his ability to perform but I was frankly willing to negotiate because I did not know anyone else with whom to negotiate. I never asked him to pay the liens and obligations himself as I thought it was entirely futile and would be a waste of time. So far as I know no one else at the bank asked him to and I doubt if any one connected with the bondholders asked him to. I don't recall the exact details of how the money was used upon receipt of the receiver's certificate, particularly regarding the \$2000 attorneys' fee to which you refer. That may well have been paid. I understand that was done. I approved the payment of that \$2000 for attorneys' fees, when I say "I", I mean someone in the City National Bank and Trust Company as Trustee approved the payment. The Bondholders' Committee did not object.

607 I understood that as part of the settlement Mr. Wenstrand, Mr. Lewis W. Riddle and Mr. Hiram S. Cody, who were on that indemnity, Exhibit M, together with the Indemnity Insurance Company of North America, were released on their bonds of \$40,000 in this court in case 8817, which was in default. I thought that it was proper to take the funds of this trust and pay off the obligations of those people on that bond in this court. I am not sure whether the matter was discussed at the bank before that payment was made. I believe I sat in on a discussion of it. I have a recollection of having discussed it and I believe Mr. O'Brien was present. I cannot say who else was present, perhaps two or three men around our organization—they generally are. We met

two or three members of the Committee, if possible. We usually have two or three sit in on a matter of this kind because we regard it of sufficient importance for two or three people to sit in. I would say deliberate action was taken.

The matter of the approval of the State Court of the receiver's certificate was left entirely up to counsel. I take it for granted that was the right way to do it.

I don't know whether those gentlemen were released on this indemnity; I don't know just what kind of an order was entered at this moment. If the Indemnity Company was re-released I suppose they fell with the release to the Indemnity Company.

Witness excused.

608 ARTHUR T. LEONARD was called as a witness, having been first duly sworn, was examined and testified as follows:

*Cross-Examination by Mr. Woods.*

My name is Arthur T. Leonard. I live in Chicago. I am Vice President in charge of the Trust Department of City National Bank and Trust Company. I have been in that position since the organization of the bank on October 15, 1932. Prior to that I was Vice President in charge of the Trust Department of Central Republic Trust Company. I was connected with Central Republic Trust Company from July 1, 1930 to the time they went out of business. Immediately prior to 1930 I was an officer of Dawes Brothers, Inc. engaged in the utility business, and prior to that association I had been a trust officer of Central Trust Company of Illinois. I did not hear all of Mr. Bickel's testimony, just the last part, but I think I heard all of Mr. Sturm's testimony. I believe I am pretty well familiar with the testimony they have given. There is nothing in that testimony that I want to change. I first heard several years ago that there was a Granada Hotel and that it was in trouble. I would not be able to recall the exact date.

From the time the City National was organized down to the time that is known as the termination date, it serviced Central Republic Trust Company so far as trust service was concerned; City National took over the Granada business. I have known about this situation gen-



erally since the Central Republic went on the record in this matter. As to my specific duties with reference 609 to this Granada matter, I have been consulted a number of times from time to time concerning matters coming up in connection with it. Mr. Bickel, Mr. Sturm and Mr. Hubbard are junior officers under my direction.

I did not know anything about the incinerator in the hotel and did not even inquire about the interior operations of the Hotel. I had not heard of this large space adjacent to the lobby which has never been rented until the time you brought the question up. I have never been in the hotel. I have not even asked for a plan of it or a pamphlet about it. I don't believe I have ever seen the operating statements of this property. I do not have anything directly to do with the payment of taxes on this property. Of necessity, I must leave all those matters to the operating officers of the Trust Company. If some kind of policy arises or something of a very unusual nature, I am consulted. I did not handle any accounts myself nor attempt to handle nor follow the details.

As to the determination of whether or not the Bank was going to take on a trust account, that is determined by a Committee under the present regulations. I am Chairman of the Committee. I don't recall that anything came before that Committee that indicated there was any time to be set or any method or plan devised to get rid of this trust. I do not periodically run over these trusts to see whether they should be gotten out in the hands of the public. All questions that are submitted for acceptance are passed on by that Committee and all questions that are classed closed are passed on to that Committee. Unless there is some reason for closing that account it is not given attention by that Committee. I did not 610 know anything about the financial history connected with this property other than what I have heard since I have been in the court room at these hearings.

Referring to Cody Trust Company, Chicago Trust Company, Central Trust Company, National Bank of the Republic and Central Republic Trust Company, the City National did not succeed to all of that. We succeeded in this trust which was formerly with the Central Republic Trust Company which resulted from a consolidation of Chicago Trust with the Central Trust Company. City National never had any connection with Cody Trust. I have heard that Chicago Trust Company was a co-house of issue with



the Cody Trust Company in this particular Granada financing.

It did occur to me that the Granada issue which had been through all those financial institutions required special treatment. I took it into the organization and it received special treatment. I would not say I paid any more attention to it but I was available to be consulted all the time. I recall consulting with members of the organization and counsel with reference to the previous 77B proceeding and the question of taking appeals and various steps in connection with that matter.

I knew about the case of *Harris vs. Tuttle*, that is the one that went to the Supreme Court of the United States. I approved that. I approved the payment of money for fees in that case. I believed it to be essential litigation and counsel were entitled to be compensated.

I am not sure of my own knowledge whether or not the Committee represented about 50% of the bondholders. 611 As Trustee we represent 100% of the bondholders.

City National was appointed Trustee by the Circuit Court or Superior Court. I don't recall which court. I am advised by counsel that the appointment was valid. I am not a practicing lawyer. I am a member of the Chicago, the American and the Illinois State Bar associations. I have not practiced law for twenty years.

"Mr. Woods: Isn't it a fact and a well known and established principal of our law in Illinois that in a foreclosure proceeding no matters affecting the title itself can be litigated.

Mr. O'Brien: Just a minute, if the Court please.

Mr. Woods: Hasn't the Supreme Court ruled that over and over again?

Mr. O'Brien: I object to that, if the Court please.

Mr. Woods: He can answer if it is a fact whether he knows it or not.

The Court: Let him answer that.

The Witness: I don't know.

Mr. Woods: You don't know?

Mr. O'Brien: It is not the law anyhow."

The Witness: The litigation was not conducted alone by the Bondholders' Committee. As I recall it as Trustee the City National intervened and became a party to that litigation. I don't recall whether it was before or after Judge Lindley had made his decision in the trial court. I presume it was after. I believe City National voluntarily came in.

"Mr. Woods: Does the trust deed provide that you may go out and intervene in any kind of litigation you think you would like to intervene in?"

612 Mr. O'Brien: I object to that, if the Court please. The Trust Deed is clear and it should be in evidence. The Trust Deed speaks for itself.

The Court: What does Mr. Leonard think about that—

Mr. Woods: What do you think about it?

The Witness: I think the Trustee has a duty to intervene in any proceedings which he may think may affect the liens of the property or validity of any proceeding involved with the property.

The Witness: I presume that the proceeding that went to the Supreme Court of the United States was not against the Debtor here but against the old Granada Hotel Corporation. I knew that that corporation did not own this property. I believe I have heard that recently that corporation had been dissolved by the Attorney General of Illinois.

Mr. Woods: Did you think it is proper to take \$4000 of the trust funds in your hands and go off into this litigation and intervene in them, is that right?

Mr. O'Brien: Your Honor, just a minute. I object to that question. The instrument is already in evidence and a transcript of that proceeding clearly shows, and we all know—

The Court: I don't see anything wrong with the question. Objection overruled.

Mr. O'Brien: Judge Lindley ruled that he had a right to reorganize one of the corporations.

The Court: Here is something I did not know before. I didn't know it was some corporation that had nothing to do, apparently had nothing to do with this concern.

613 Mr. O'Brien: The corporation made the issue of bonds and Judge Lindley and the Court of Appeals held they could reorganize whether it had been dissolved or not. That is the way, Your Honor, I recollect it.

The Court: Who made the mortgage?

Mr. O'Brien: The Granada Hotel Corporation is the one he is talking about. Not the Granada Apartments, Inc.

The Court: Well, let him answer that question.

The Witness: I think it is entirely proper when I am advised on any reorganization coming out of that proceedings would be invalid and that we would be unable to obtain a clear title to the property for the bondholders.

The Trustee believed it was its duty to intervene in those proceedings. The amount paid for what was done in the trial court and for what was done in all three of the courts was \$3,857.79, and covered the payment in full of services to date from the United States District Court to the United States Circuit Court of Appeals and of services in the Supreme Court of the United States. I presume the Trustee was paid the costs in that case amounting to \$167.50.

Mr. Woods: Do you know how much was paid for a manager out there during the time the Trustee was in possession, Mr. Leonard?

The Witness: No, I don't.

The Court: Do you Mr. Sturm?

Mr. Woods: Here is a check, Your Honor, Exhibit I, I believe it is.

The Court: How much was paid?

Mr. O'Brien: \$50 a month; is that right?

Mr. Woods: Exhibit E.

614 The Witness: He is talking about a manager out at the hotel.

Mr. Woods: Master in Chancery, he said.

The Court: No; manager; \$50 a month.

Mr. O'Brien: That is \$50 a month.

The Court: What else did he get?

Mr. Sturm: I guess he had his room.

Mr. O'Brien: No.

Mr. Sturm: He did not.

The Court: He got \$50 a month.

Mr. O'Brien: \$50 a month, that is right.

The Court: What else did he do for a living?

Mr. O'Brien: He is in the real estate business and operating other properties. The gentleman is Hall, Mr. Hall.

The Court: Tell me about it. Who was Mr. Hall?

Mr. O'Brien: There (indicating).

The Court: Hall got fifty dollars a month as a manager?

Mr. O'Brien: That is right.

The Court: Was there any other person got any fees for managing?

Mr. O'Brien: No.

Mr. Sturm: We had a resident man.

The Court: How much did he get?

Mr. Sturm: He gets \$250 a month.

Mr. O'Brien: He still does, doesn't he?

The Court: Mr. Hall got \$50 a month.

Mr. Hall: I draw \$50 a month for expense money.

The Court: How much?

Mr. Hall: \$50 a month for expense money.

615 The Court: What did you get for your services?

Mr. Hall: That is still on the fire. It probably never will be paid.

The Court: And the resident manager got \$200 a month. Any other manager have those fees?

Mr. Hall: No, except the fees that were paid were spent for management services.

The Court: How much was paid to them?

Mr. Hall: That was 4% of the gross receipts.

The Court: That is \$200, \$65 a month.

Mr. Hall: Well—

The Court: They amounted to about that.

Mr. Hall: Fifty dollars a month came out of the management there, that was paid by the bank.

The Court: Came out of what?

Mr. Hall: That was deducted from the management.

Mr. O'Brien: It came out of the trustee personally, that is all.

The Court: Oh.

Mr. Hall: 4% was computed and the \$50 deducted from that for expenses and the balance was paid to the bank for management each month.

The Court: Where is your claim?

Mr. Hall: I have no claim.

The Court: Working for the love of production?

Mr. Hall: Well, they had then started the Cody Trust connection, and I have not bothered to press that. I did not need it, I am not worried about it.

The Court: I am glad to find somebody that does not need money. But now let me ask you this: the \$50 a month that you got came out of the 4%?

Mr. Hall: Yes.

616 The Court: Did the \$20 come out of the 4%?

Mr. Hall: No, that was paid as a part of the payroll, the operating payroll.

The Court: So when their money went for managerial service, did you get that either?

Mr. Hall: None whatever.

The Court: Now, 4% on what? /

Mr. Hall: That is on all gross collections. If the gross collections were \$6000 it would be \$240 less \$50.



The Court: Did you ever sell anything up there during the time?

Mr. Hall: No.

Mr. O'Brien: I have the detail on that fact, if the Court wants it.

The Court: No. What was the operating fee; what did they aggregate, about; what was the average monthly amount?

Mr. Hall: Well, I would say \$6000 would be an average.

Mr. O'Brien: Here is one, \$249.85.

Mr. Hall: It varied, the amount, of course.

The Court: Did the bank get 4% of the moneys collected from the Arlington and the other hotels?

Mr. Hall: Yes sir.

The Court: What?

Mr. Hall: Well, that was a separate transaction. You mean the amount collected from the hotel?

The Court: Yes.

Mr. Hall: Oh, yes, that was part of the earnings.

The Court: Here they collected \$1000; then they made \$40 for just receiving the check.

617 Mr. Hall: Yes. They would owe me \$10 on that plus.

The Court: They would owe you \$10. Why would they owe you \$10?

Mr. Hall: Of course, I was to have fifty.

The Court: Fifty what?

Mr. Hall: Fifty dollars; expenses. Of course it costs me something to go to that place, and other things. The expenses would probably eat up the fifty; more probably; I don't know about that.

The Court: You say the average, common, the average gross monthly income from there would be—

Mr. Hall: It was around about six or seven thousand.

The Court: Sixty Five Hundred?

Mr. Hall: That would be very close I would think.

The Court: And twelve times that would be, for a year—

Mr. Hall: Yes. We have an accurate record of that.

Mr. O'Brien: I have an exact record here, your Honor; sixty-seven, sixty seventy-two.

The Court: It would be about Eighty Thousand Dollars a year.

Mr. O'Brien: Income, net return, about ninety.

The Court: What?

Mr. O'Brien: Ninety thousand.

Mr. Hall: I don't know exactly. I have so many figures in my head, I hate to make a statement.

The Court: Four per cent of about eighty thousand would be thirty-two hundred; and two thousand—two hundred dollars a month would be twenty-four hundred; that would be about another twenty per cent of the gross, wouldn't it?

Mr. Hall: Of course, the manager devotes—

The Court: It would be about in there, three, three and a half or four per cent.

618 Mr. Hall: Of course the manager does not devote all his time to the property; he has other activity.

The Court: I am just finding out what the costs are.

Mr. Hall: I can give you the costs since the Trustee has been in possession, the exact cost, if you wish that, the exact figures for each calendar year, which would probably be safe.

The Court: What did it cost to manage it?

Mr. Hall: The total cost to manage?

The Court: Yes.

Mr. Hall: I would have to refer to the records to get that exact figure.

Mr. Woods: The exact figures, your Honor, are on page 13 of the answer of the trustee here, and we will prove these up later.

The Court: Just roughly.

Mr. Woods: The total is \$11,364.42 for that period.

The Court: How much?

Mr. Woods: \$11,364.42, the management fees.

The Court: That is management fees over and above this four per cent?

Mr. Woods: No, that is the four per cent.

The Court: Eleven Thousand?

Mr. Woods: \$11,364.42.

The Court: 42 cents?

Mr. Woods: That is from the beginning of 1934, of the time the Court Trustee took charge.

The Court: 1934; '35 and '36.

Mr. Hall: We will have four years.

Mr. Woods: Three years and a half.

619 Mr. Hall: That is just the exact management fee, isn't it?

Mr. Woods: That is the exact management fee of 4%.

The Court: On top of that, there was \$2400 a year.

Mr. Woods: Correct.

Mr. O'Brien: That is an operating charge.

The Court: What is your judgment, Mr. Leonard; assuming that a property of this kind costs \$3,200 for some

sort of fees; \$2400 for another sort of a fee, and assuming that there is still a principal higher up and that it has receiver's and trustee's fee and general attorney's fee; what do you think, do you think that that was a profitable property for the owners of this enterprise?

The Witness: Your Honor, I think it was necessary expense for the enterprise and I don't think it was excess beyond reason.

The Court: Just how much do you think real estate can bear in this town; what do you think real estate can bear in the way of management costs?

The Witness: I would say your Honor that the regular schedule is—

The Court: Don't talk to me about schedules. I know something about schedules. What do you think it will bear?

The Witness: It won't bear anymore than it has to.

The Court: Don't you think that—you were the head of this Trust Department.

The Witness: I am.

620 The Court: Don't you think that something—you should have given consideration to see the desirability of speedily getting this property out of court and out of the management and the trust companies and into the hands of the owners, don't you think you should have done that?

The Witness: Judge, I feel the same way with every real estate bond issue that is in our shop.

The Court: You do feel that way?

The Witness: Yes, sir.

The Court: You think you did everything that reasonably could be done to get this property out of court?

The Witness: I am satisfied we have.

The Court: I wish I were; I wish I were.

The Witness: I feel that circumstances might exist in this property and the time it existed during this period could not have let us get it out any sooner.

The Witness: We felt it was the trustee's duty to oppose the Harris vs. Tuttle litigation because in a reorganization getting you out of any proceeding would not be a valid reorganization and we could not get a good title. If the Trustee had not raised that question and it had not appeared in the record and the Trustee had gone on with the proceeding there would have been something there to indicate the Court did not have the completest jurisdiction. There would have been the fact that the reorganiza-

tion did not comply with the requirements of 77B and when it came time to sell the property you could not have made good title. I was advised by counsel that we could go to the Supreme Court of the United States and get such a ruling.

621 At the time the City National Bank accepted this trust by appointment, I thought that the Court order bound everybody completely forever. I thought it was a good appointment. The Trustee did not appeal from that order and did not want a final ruling from the Supreme Court of Illinois on that question. The Trustee did not accept it. I did not accept the trust gladly. I accepted it readily. The Trustee was appointed on a petition filed by the Bondholders' Committee. I don't believe any one appointed the Bondholders' Committee. I did not select them, I don't know who did. The two active members of that Committee are junior employees of City National.

"Mr. Woods: Did you inquire as to whether or not that bondholders' committee, by the deposit agreement, had any authority to select the Trustee?

Mr. O'Brien: I object to that, if the Court please.

Mr. Woods: Well, he can answer yes or no whether he made inquiry.

The Court: Answer.

Mr. O'Brien: Just a minute. I want to make an objection.

The Court: You may answer.

Mr. O'Brien: I object.

The Court: That is surprising to me, you know. I have been under the general impression that nobody thought the court in a foreclosure case had the right to appoint a Trustee. I did not suppose anybody has seriously contended that such a court had the right to appoint a trustee. I know it has been done. I know these trust companies going into foreclosure cases, and getting themselves appointed trustee, but I did not suppose anybody seriously contended that they had any right to.

622 Mr. O'Brien: The upper courts have so ruled and you may have cases.

The Court: How are you going to bind somebody that is not in here?

Mr. O'Brien: Well they were in.

The Court: Well, we have them in. They were not brought in on your account.

Mr. O'Brien: Oh, yes, they were.

The Court: I cannot see how they could be in the court.



Mr. O'Brien: You have not seen the record, Judge?

The Court: No, I did not.

Mr. O'Brien: That is it, counsel has not showed it to you.

Mr. Woods: You did not mention it in your pleadings here, sir, that there is such a record.

Mr. O'Brien: I said the court has jurisdiction of the subject matter and the parties, and it did.

The Court: Well, just show that to me before we get through."

The Witness: I find it difficult to answer your question that when it comes to a question of confirming some action that I want done in an order of the court then it is all right, and that is the way I look at it. The Trustee has not appealed from any of these orders in any of these proceedings when it was in the Trustee's favor and when it was what the Trustee wanted done. The Trustee has not questioned the validity of the order under those circumstances. It isn't a fact that in the Superior Court and in this court the trustee stood outside as Trustee and defied both the courts to do anything about the revenues until the 17th day of May of this year.

623 We did not have any objections to the appointing of a receiver in the Superior Court. We did not appoint the receiver and we did not get him out just as soon as the reason for having a receiver was over. The receiver got out upon the agreement of all parties. The bondholders were represented in that agreement. I thought they were the principal creditors. We did not have to have the unknown owners in the proceedings sign on the line.

"Mr. Woods: Here is a property that has got debts of approximately a million dollars, did have when it came into this Court; do you think in a million years you could ever get that property in any kind of reorganization state, work it out over here on La Salle Street, where your valuation is one-fifth of the debt; do you think that could ever be done the way you were doing it over there on La Salle street?

The Witness: I don't—

Mr. Woods: This property or any other property?

The Witness: I don't know what you mean by your question, doing it over on LaSalle Street. Do you mean—

Mr. Woods: Well, outside of the court?

The Witness: Outside of the Court?

Mr. Woods: Yes.

The Witness: Outside the Superior Court?

Mr. Woods: Outside of any court.

The Witness: No, I don't think it could be done outside of court without have some court's jurisdiction."

The Witness: I don't know of my own knowledge that litigation has gone on in the state courts for ten years about this property. I have no idea how much money 624 has been spent on that litigation. I thought that the proceeding in the Superior Court would enable the property to be reorganized. I thought that the decree would get the property out of trouble.

I recall that I stated a while ago that I knew the Granada Hotel Corporation, the old corporation, had been dissolved by the Attorney General. I don't believe I could answer the question as to whether or not I think that any court on a proceeding started more than two years after a dissolution can enter a decree that has any validity at all against a defunct corporation; that requires legal knowledge that I do not have. My opinion is that foreclosure proceedings could not have been completed and go to sale and eventually you would have good title.

"Mr. Woods: Well, let me ask you this question: Is a judgment against a dead man any good, even if you start proceedings before he dies?

Mr. O'Brien: If the Court please, I object to that. It seems to me—

Mr. Woods: He is a lawyer and will frankly—

The Court: Let him answer.

The Witness: I don't know.

The Court: When did you get a decree in the state court?

Mr. Woods: The date is December 18, 1936, your Honor.

The Court: December 18, 1936?

Mr. Woods: You have no question about that decree being perfectly all right; but you think that if this Court decides that it has jurisdiction under 77B proceeding and you go to the Circuit Court of Appeals, and that court says, 'Yes, the jurisdiction is good,' that you can not rely on that at all, and you must go to the Supreme Court of the United and get an answer there, is that right?

The Witness: I cannot answer that question generally yes or no without generalizing. It depends upon 625 the circumstances and upon the facts that exist.

Mr. Woods: Make the answer any way you like, tell the court.

The Witness: Well, I believe we could rely upon a foreclosure proceeding and work out a valid title to the real estate securing this bond issue. I believe that if the normal requirements of the 77B proceeding were present and this Court said it had jurisdiction we would not resist it for one second. If we were advised by counsel that the facts as they exist in a particular case are such that it does not meet with the requirements of the law and that any title coming out of the reorganization and that proceeding would be involved, we would have an absolute duty to appeal it to the highest court of the United States.

Mr. Woods: You did not think that it is a normal requirement to have a live defendant; that is not necessary?

The Witness: I cannot answer that, Mr. Woods.

Mr. Woods: Well, do you or don't you think that?

The Witness: No."

(Mr. Woods then requested that the Court Trustee's Exhibit O and Court Trustee's Exhibit O-1 be marked for identification.)

The Witness: I would not know if it is a fact that the Trustee had an arrangement about this building and a lot of other buildings that had been through the Cody mill, by which the Trustee paid Mr. Hall to allow the Cody interests to know what was going on in the management of all these properties.

"Mr. Woods: You did not know that? Just—

Mr. O'Brien: No, and that is not the fact either, Mr. Woods.

626 Mr. Woods: All right, if he don't know, he don't know.

Mr. O'Brien: Nor anybody else."

Mr. Woods thereupon asked the witness to look at paragraph 13 of the petition of City National Bank and Trust Company and to refresh his recollection about the relation of City National Bank and Trust Company to Mr. Hall.

The Witness: I have read that paragraph. It would not change my answer that I do not know about an arrangement about this building and a lot of other buildings that have been through the Cody mill by which the Trustee paid Mr. Hall \$50 a month to allow the Cody interests to know what was going on in the management of all those properties, but this petition does indicate that Mr. Hall had been retained in order to keep the Cody Trust Company informed of the status of this issue from time to time.

Mr. Hall was there because the Central predecessor had sold only, as I recall it, two-fifths of the bonds and the other three-fifths of the bonds were sold by others who wished them to keep you advised of the status of the management of the building.

“Mr. Woods: And you thought it was proper to use the trust funds for the purpose of employing a representative of the Cody interests, is that right?”

Mr. O'Brien: I object to that, nobody said he was a representative of the Cody interests.

Mr. Woods: That is what the petition says I submitted there.

The Court: Overruled.

627 Mr. O'Brien: Well, I don't read it that way.”

The Witness: I don't believe I was aware of the arrangement at the time it was entered into. I don't know when it was made. I believe it was made by the City National. I don't know if the document is in writing. I don't know whether there is one or not.

Thereupon a recess was taken to two o'clock P. M. on the same day, Thursday, September 23, 1937.

Met pursuant to recess September 23, 1937 at two o'clock P. M.

Mr. Woods stated that Mr. Rosenstone would examine certain witnesses called by Mr. Woods.

MR. STANLEY D. TILNEY, called as a witness on behalf of the Court Trustee, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Rosenstone.*

My name is Stanley D. Tilney. My address is 300 South Kensington Avenue, LaGrange. I am a certified public accountant, pursuing that profession at the present time. I know Mr. Woods, the Trustee in this case.

I have been to the Grahada Apartments and have inspected the records and books at its office. There were several sets of books at the hotel running from inception of the Granada Corporation in April, 1929. Those books are rather complete to 1934 when there was a new set of

628 books instituted which omitted to show the capital accounts, they being confined chiefly to operating accounts of the hotel and they continued until 1937 when there was a change in the Trustee. The change in



the bookkeeping method was made about the time Central Republic took charge as Trustee in possession. I did not find a complete set of vouchers evidencing payments and disbursements and the examination I made indicated to me certain vouchers were not there. The period of time of the missing vouchers were from 1934 on. That was the time that the change in the bookkeeping system was attempted. The missing vouchers pertained chiefly to disbursements that were made through the Trustee's account and applied on taxes generally and a number of other items.

There was a transfer of funds made to what is termed the trustee's account which was money accumulated over and above the amount for operating costs that was paid directly from the office of the hotel. As far as the record indicates the Trustee's account was kept down at the City National and the transfers were made to the City National Bank approximately once a month.

I have a copy of the answer that was filed by the Trustee. I will turn to page 12. I furnished the information to the Trustee that is contained in paragraphs 21 and 22 as follows:

"Against right and authority during 1936 claimant bank says they have withdrawn for themselves and counsel cash from Debtor fund as follows:

Counsel fees, furniture, litigation, 1934.....\$2000."

I obtained that figure from the books.

629 The next item, Trustee's foreclosure fees, \$1608.56, was obtained by me from the books.

The next item, Master's foreclosure fees, \$2552.80 was furnished by me to the Trustee and was taken from the books.

The item Court legal expenses, *Harris vs. Tuttle*, \$167.50, was furnished by me to the Trustee and was taken from the books.

The item, counsel fees, 77B case, 1935, *Harris vs. Tuttle*, 297 U. S. 225, \$3857.59, was furnished by me and that was also taken from the books.

The above items total \$10,186.65.

On page 13 there is an item which refers to "Trustee took for itself as fees during calendar year 1934 \$2850.79." That figure came from the books and was furnished by me to the Trustee. When I refer to books, I mean the books of account at the hotel.

I furnished the figure \$3525.28 for the year 1935 and it was obtained from the books of account at the hotel.

I furnished the figure \$3535.17 for the year 1936 and it was taken from the books of account at the hotel.

The figure \$1433.05 for the year 1937 to May 17, the date of transfer, was taken from the books of account at the hotel.

The correct computation of the total is \$11,364.42.

Directing my attention to page 17, with respect to certain claims and charges against the Arlington for service, the item \$4080, appearing on the books as a charge against the Arlington Hotel or Apartment Building was for the year 1933. It was for refrigeration and water charges, and heating which arose from a monthly billing. It does not appear to be on the books of the Granada Corporation now as it was charged off. I don't know the exact date when it was charged off. My examination was rather brief on whether the books indicated in any way whether or not any portion of the item was ever paid, but I would say that it was not paid.

Other than the examination I have made for the various items about which I have testified, I have examined the books from the beginning of the corporation, commencing with the transfer of certain assets and liabilities from the old corporation and carried on down annual periods which ran in fairly good sequence down to 1934. In 1934 the books were changed and the capital accounts were omitted from that time on. I also have taken a record of what the books show from the period 1934 to 1937, by like periods, omitting capital accounts.

The books as they stand now do not segregate all the way through, the operating expenses with respect to the heating, lighting and water. There is a certain period where it is shown and other periods where it has been shown generally as operating expenses. I was able to separate them so that for a certain period, the earlier part of the period down to 1934, so that I can comprehend what was spent in operating expenses for those items. From that time on the operating expenses are combined so that to segregate them as to any particular facility would require going into the subordinate records.

I know Mr. Schott who is sitting here. I went with him to the offices of the Granada several weeks ago for the purpose of furnishing certain information with respect to the operating of the heating and power plant for the years 1935 and 1936. I furnished Mr. Schott with sundry vouchers covering expenditures upon those various items during those years that were avail-

able at the hotel. Mr. Schott has those figures. Those figures that he has were compiled under my direction and in my inspection of the books.

I did not make a compilation of operating expenses for the years 1930, 1931, 1932, and 1933 in detail. 1934 was a separate year; that is when the Trustee came in and I furnished Mr. Schott with a combined total for the year, not in any specific detail. The figures which I have on this sheet to my knowledge do not include any operating expenses of the other two apartment buildings, the Arlington and the Lincoln Park Manor.

I made no examination of any books except just on the Granada. The expenses or disbursements include only the overhead that is on the record, not just the overhead in the engine room and boiler room, but with all the other expenses pertaining to the operation of the hotel, including the manager's salary.

You cannot indicate the items on this sheet that apply only to the cost of water, the cost of electricity, the cost of heating and overhead that goes with the dispensing of those things without reference to the charges on the other part of the building. It is combined with other items of operation cost.

Mr. Rosenstone then handed the witness the sheet.

The Witness: I have on that sheet all of the cost items, as I understand them, incident to the Granada furnishing heat, water, hot water and refrigeration which is to go to the other two properties. This sheet is all in my handwriting and was made up from those records at the hotel.

The books which I found at the Granada Hotel premises for the period prior to 1934 were the regular books of account of the corporation itself, and beginning with March, 1934, a new set of books was carried on at the hotel premises and in a general way those books reflected the operating charges incurred and made in conducting the hotel business together with the revenues. It was not necessary to have such a set of books at the hotel premises in order to settle accounts with its guests because they kept a separate ledger on guests' accounts.

The books which were started in 1934 consisted of a ledger but it confined its information to the operating accounts and the revenue account. I don't know if it

was from those records that the amounts which were sent down every month was determined.

I found all of the operating disbursement vouchers at the hotel premises with the exception that the voucher jackets covering the electric light expenses did not carry the electric light bills for the period 1935 and 1936, I believe, and I did not examine beyond that. As far as my test checking went I found the operating vouchers there. I did not examine every voucher. In general, the vouchers which were not there were those evidencing disbursements made directly by the Trustee.

Those so far as I am informed were kept at the bank itself. I haven't seen the books or records kept at the bank. I had no occasion to ask to see them.

633 "Mr. O'Brien: If the Court please, as I said before, I have no objection to the exhibit, or rather, to this instrument Trustee's Exhibit Q on the ground that it is not sufficiently qualified; but on the face of it I do object to it as not containing data which is essential to the disposition of this question. The instrument purports to cover not only the operating charges which were spent at this time at the Granada Hotel, but it covers as well combined accounts concerning interest, depreciation on the building and various other items. My objection is this, if the Court please, in figuring out how much it cost the Granada to provide heat, refrigeration, cold and hot water, there are various specific charges which enter into that calculation, and which do not include most of the items here which are listed as a part of the total."

"Mr. Rosenstone: I understand, but, as I stated, that was put in merely for the purpose of comparison. We expect to call another witness.

The Court: Well, it may be received, it may be received. These experts may differ. One man may think certain items are necessary, and another man may think other items are necessary. This is what this witness thinks. It may be received."

Whereupon said document, marked COURT TRUSTEE'S EXHIBIT Q was offered and received in evidence.

The Witness: The first item listed on the Exhibit for salaries for the year 1936 in the sum of \$8,694.87 does not include all of the salaries paid at the Granada for that year. It includes the salary of the manager and clerical help. It does not include the engineer's. The engineer's salary is included in a separate item.



634 The next item listed in the amount of \$1244.56 generally covers the services of certain individuals working at the hotel for providing amusement to the guests.

The next charge is legal and auditing which for the year 1933 is \$2,578.54. The general presumption would be that the legal has to do with ouster suits and the like.

The matter of office supplies in the sum of \$556.97 for the year 1936 is for stationery for the front office of the hotel and stationery for the lobby and stationery and books for the office and things of that character.

The item exchange in miscellaneous in the amount of \$949.58 represent the cost of exchange on bank checks and there are miscellaneous items included in that not otherwise specifically specified.

The pay roll in the amount of \$23,362.21 for the year 1930 and \$14,765 for the year 1933 covers the wages of people at the hotel and it applies to all of the other employees other than the administrative force included in the other item. It includes maids, engineers, waiters and various other workmen engaged on the premises. The engineer's salary is a relatively small portion of the total.

The item for gas for the year 1930 in the sum of \$820.20 is for gas which is furnished to the hotel consumed by the tenants in the operation of the gas stoves in the kitchenette apartments.

The housekeeping staff expense in the amount of \$241.65 is in connection with the housekeeper's operation and the same is true in connection with laundry and cleaning in the amount of \$3,546.73.

635 The item charged for electric pumps is for replacements throughout the hotel.

The items for light and power for the year 1930, in the amount of \$8,082.96, includes all of the light and power bills paid by the Granada as shown on the books. So far as I know it includes electricity for every purpose used there. It includes the operation of the elevator, lighting the lobby, and the various rooms and also the operation of any pumps.

The item for fuel oil and coal for the year 1933, in the amount of \$7,066.96 is the actual fuel that has been purchased. I would not know about the consumption.

The item for repairs and maintenance during the year 1930 of \$4,143.35 takes in all sorts of incidental repairs and maintenance items throughout the Granada Hotel itself.

There was no charge in 1930 for replacement of operat-

ing equipment and the charges range from \$465 to approximately \$2100 for the other three years. I do not remember what replacements were involved. They would be specified generally in that account.

The item of water for the year 1930 in the amount of \$1766.64 and in the amount of \$1949.22 for the year 1933 includes the actual bills paid by the Granada for those years.

I think that the insurance item for the year 1930, in the amount of \$1452.04, includes insurance of every kind that was procured.

Underneath that schedule there is a further one which is intended to cover what is generally termed as fixed charges, particularly with respect to interest and depreciation and the bad debt provisions. The interest is shown separately as to the separate mortgages for each year, meaning the first and second mortgages and the notes.

636 The depreciation item is figured against the building and the furniture and fixtures. The item shown on Trustee's Exhibit Q are the items as shown by the books of the corporation for those years. Those figures do not represent any actual check which I made to see that all charges were included on the books. There is no way I can tell by looking at these figures, these operating items, such as pay roll, for example, just how much of the total of the item is included for say engineer's pay roll and from those figures, for example, as to light and power, I cannot tell you how much of the total shown here is used for light and power in operating the Granada elevators. I am not informed as to whether or not they perform in and about the Granada other service than ordinary engineering work. From those figures if they do there is no way in which I am personally able to tell just how much of the salary charged is allocable to the special additional service. These figures are a description from the books of the corporation for that period.

*Redirect Examination by Mr. Rosenstone.*

The Witness: I gave Trustee's Exhibit Q after it was compiled to Mr. Schott. I explained to him what it was. The omission of the year 1934 from the compilation was done because it was not possible to prepare the statement for the year 1934 in that form due to the fact that the books from which those figures were taken were continued to March 31, 1934 and not beyond that date. On March

16, the Trustee took possession and opened up a new set of books which started from March 17, 1934, so there is apparently an overlapping there, or the possibility of an overlapping, and there is nothing in the record to indicate a reconciliation between those two periods. I haven't made that compilation for the year 1934 on account of lack of time in getting to it and lack of information.

Witness excused.

WILLIAM H. SCHOTT, called as a witness on behalf of the Court Trustee, having been first duly sworn was examined and testified as follows:

*Direct Examination by Mr. Rosenstone.*

The Witness: My name is William H. Schott and I live at 426 Diversey Parkway, Chicago. My business is an engineer, and I have been engaged in that business since 1895. From '85 to '89, I was with the Thompson & Houston Electric of Lynn, Massachusetts, getting my training. When I was employed by them I did steam and electric engineering. I was transferred here by the same company and was put on the road as traveling superintendent. I left their employ and for the next five years I was with Western Electric Company. My duty there was traveling superintendent. I then came to Chicago and opened up a consulting office here on October 1, 1895. I specialized in the utility field. By that I mean electric, water, gas, light, heat and the whole field. I took up in 1898 the question of specializing in heating. That developed the Schott System of heating. I had a hot water system and I had steam, both from pressure and from vacuum, and worked from several different points from that system. That system is still known as the Schott System all over the country. It is in use in Indianapolis. We have a plant down there with 30,000 H. P. in it.

I know Mr. Woods, the Trustee in this case. I first met him in regard to this matter about six weeks ago.

I made an inspection of the Granada Hotel, 525 Arlington Street. I am familiar with the Arlington property and the Lincoln Park Manor property in so far as they are operated in connection with the operations of the Granada. With reference to the Granada, the Arlington is across the street in the front of the hotel and the Lincoln Park

Manor is in the rear facing on Fullerton. There is an alley between the blocks.

After I had gotten my general data together I called upon Mr. Tilney for the records so far as those departments are concerned. I went through the accounts and segregated out those figures that applied against that department for the years 1935 and 1936. I obtained those figures when he was present. I called off the items and he got out the vouchers and I segregated out that portion applying against those departments. As to the inspection I made with reference to operating expenses so far as the pay roll was concerned, it was simply the labor employed in the boiler room which was chargeable against that department. The various subdivisions which I made in making up my total figures were pay roll, electric bills, water bills, maintenance, and all repairs actually made. When I say pay roll, I mean pay roll that relates to that particular branch of operating cost. In arriving at that figure, I did not take into consideration the manager's salary or the legal fees, and in connection with the foreclosures and this proceeding. I did not take into consideration the help around the hotel.

639 The service furnished to the Lincoln Park Manor and to the Arlington was heat and cold water and refrigeration and, of course, in season the heating of all of the hotels. There is a central plant with respect to the system of refrigeration. That is also the case with the other hotel, the Lincoln Park Manor.

In the Arlington they have a vacuum system of heating that is steam heating, the same is true of the other hotels. The Lincoln Park Manor and the Arlington have a heating system but have no plant to operate it, that is they have radiators but have nothing to supply the heat with.

In the Lincoln Park Manor and the Arlington there are ice boxes with coils but no units by which that energy can be supplied.

The connection between the Granada and the Arlington is made by a system of pipes which lead through the building and across the street through a tunnel to the Arlington. I believe that the pipes belong to the Granada up to the Granada property line and the rest of the system belongs to the respective hotels.

In reaching my conclusion on costs, I took 1935 and 1936 as a basis and took the average cost of those years and corrected it for the costs for the year 1937. In 1937 the only item in which there was a variation was the cost in



oil and this cost was brought up to the market price for 1937.

In determining the heating costs, the basis of determination was the cubic contents of the building. I measured up all three of the buildings from drawings to establish the cubic contents of the heating space. I had the original drawings and inspected them at the Granada Hotel. The three buildings had practically the same plan and specifications and the same type of construction. It would 640 not cost more per cubic foot to heat one building than another. In determining the refrigeration costs I took the cubic contents of the boxes to serve as a base. The hot and cold water was prorated on the same basis as the refrigeration. Each building carried its percentage which was based upon the number of connections. In other words, every unit has got its ice box, its bath and its other water services, so that if you have a given number of ice boxes you have a like amount of other water services, so you prorate it on the same basis as the ice boxes.

I made a report of my inspection and conclusion to the Trustee. The document which you hand me bears my signature. I delivered this to Mr. Woods about the date it bears, September 10.

Whereupon Court Trustee's Exhibit R was marked for identification.

Mr. Rosenstone then showed the witness Trustee's Exhibit Q.

The Witness: I have seen that document before. Mr. Tilney gave it to me. I did not from that document make up or compile the figures on the cost of operating the heating plant and the furnishing of refrigeration service and water service to these other two buildings, for the reason that I simply used it as a comparison to see how the items compared over a series of years. I took no figures from that document in making my conclusions.

In my determination it was necessary to make an appraisal of the installation of boiler, installation in fire room, tanks, heaters, etc. and the refrigeration plant in the Granada Hotel, as that was to establish the amount of investments in those apartments. I made an ap- 641 praisal and when I got through my figures were so near those previously established that I accepted the previously established values. I was shown this previously established valuation after I had made this report or prior to the time it was furnished, which were appraisals furnished by Mr. Lewis. Mr. Lewis is a con-

sulting engineer here in town. He apparently made a report in 1929 on this property. I have forgotten to whom he made the report. It was to some trust company prior to this proceeding, as I understand it. The figures in the appraisal that I used applied to the boiler installation complete with all accessories which amounted to \$19,000, pumps, tanks, heaters, and so on which amounted to \$9,230 in addition to the \$19,000, and refrigeration plant complete, which amounted to \$16,280.

I measured or computed the number of square feet in the boiler room of the Granada. There are 7,990 square feet occupied by the plant. There are 86,000 cubic feet in the building. I computed the cost per cubic foot at 70¢, less a depreciation of 24%, which represents a present value of \$45,752.

In determining the split between the three buildings, I arrived at a proportion on the heating end of it: Granada 50%, Arlington 29.76%, and the Lincoln Park Manor 20.24%. On the refrigeration the split was 48.95% to the Granada, 33.434% to the Arlington, and 17.61% to the Lincoln Manor.

I arrived at those percentages by determining that Granada has just the same cubic contents as the other two, so it is entitled to carry half the expense as to heating.

642 In reference to the refrigeration, the Granada has 558 feet or 48.95%, the Arlington 486.5 feet or 33.434%, and the Lincoln Manor 309 feet or 17.61%.

As to the figures that I have on each item which entered into this total cost what it was for and the amount for each year I will give 1935 first:

Pay rolls	\$ 2,460.00
Electric Bills	7,278.02
Water	1,992.31
Oil	7,522.36
Maintenance	212.00
Miscellaneous	120.00

Total \$19,589.69

For the year 1936:

Pay rolls	\$ 2,460.00
Electric Bills	7,356.82
Oil	7,648.09
Water	2,057.44
Maintenance	1,091.27
Miscellaneous	141.00

Total \$20,733.62

I then took the average of those two years as a basis for establishing the 1937 costs and added that figure to the difference of the oil. Everything else was the same.

There are three electric meters in the Granada Hotel, one that meters the current used by the halls of the building which would be a direct expense to the Granada Hotel. There is another meter that checks the current for the apartments, that is a Granada expense and not taken into consideration in the report. The other meter is a general power meter to determine the amount of current used by each department in the general split.

643 The average for the two years for the lighting department is \$7,317.42.

The split to the Granada is house lighting \$2,292.54, power \$5,024.88, making a total of \$7,317.42. The \$5,024.88 power item is split 77% to refrigeration, or \$3,869.16; heating 10%, or \$502.49; water 8% or \$401.99; elevator and laundry 5%, or \$251.25, making the total of the power requirements appearing as the total power cost.

In determining the percentages used I checked up the power used by the refrigeration department and by the heating department and the water department and the elevator and laundry and made a split, taking the one supplied from the max demand meter and the balance by splitting it up by meter readings. The vouchers for the electric lighting bills had the meter readings and I got the constants of the meter so I could reduce it down to actual readings. There were no separate electric light bills. I used the vouchers which carried the details of the bills, but the bill itself was not attached to the voucher except in one case. I just simply had the average of the readings of the meter, but it had no record as to the constants, but I had records of the constants so that I could make a check. I mean by constants that you get the k. w. from the meter where there is a direct reading and if it is 60 you multiply by sixty, and the other by 120, so you take the constants and multiply the readings by these figures that they apply to which gives you the k. w. consumption which was actually consumed. The cost of electricity for those three years is based upon actual consumption as shown by the records in the Granada and the meter readings.

In regard to the oil, I determined the amount expended during those two years by taking the amount of oil which was purchased, but I made up my records on the records.

of the actual consumption. In 1935 they purchased 644 more oil than they used, but in 1936 they used more oil than they purchased, so the storage was depleted just that much. So I only charged to the operation the actual oil used as shown instead of the oil purchased. They have two 8000 gallon tanks.

I determined the water consumption of city water from meter readings. Maintenance figures were for miscellaneous repairs that belonged to the boiler room and the pipe system used in the refrigeration. At one time there was a pump out of order and that was put in shape and there has been some miscellaneous maintenance of the boilers which applied to the burners.

The item of miscellaneous charges consisted of little odds and ends. They were shown as boiler room supplies and for the refrigeration end of it; so, not having an absolutely accurate record, I charged 50% to each department, charging it on the heating basis.

I determined the pay roll from the physical vouchers which shows payment for the boiler room.

There were three employees in the boiler department. I imagine the chief engineer has general charge of work outside, through the house, miscellaneous repairs, but when we take into consideration the fact that he is in the boiler room all the time during the heating season and those things are done probably through the dull season, I could not see why it should not be carried by the heating department and the refrigeration department, because that is what he is employed for. The three employees I spoke of take care of the refrigeration department. The only man who gets outside is the chief man, the other two men are in the boiler room all the time. I have not segregated 645 the salaries but they total up to an amount of \$2,460 for the year.

From the figures which I have given you, I made an apportionment in dollars and cents against the Arlington, the Lincoln Park Manor and the Granada.

There were 21,050,000 gallons of water used which cost 6.8¢ per thousand, an item of \$1,431.40.

I am now talking of refrigeration and water consumption in connection therewith. As to electric power, there was 241,822.5 k. w. at 1.6¢ per kilowatt. That was the average of what the power costs, or \$3,869.16; one-half of the labor \$1,230; one-half of the repairs \$600; insurance and taxes \$393.09; 15% of \$16,280 being the cost of plant in



order to cover interest, depreciation, supplies and maintenance, \$2,422. The total of that made Granada's part \$4,796.18; Arlington \$3,331.91; Lincoln Park Manor \$1,655.54, or a total of \$9,965.65. That was set upon a basis of 48.95% to the Granada; Arlington 33.434%; Lincoln Park Manor 17.61%. Then to the Arlington and the Park Manor I added 20% of the operating profit, of the actual operating item, amounting to \$606.38 on the Arlington and \$331.11 for the Lincoln Park Manor, making the ultimate total—Granada \$4,797.18, Arlington \$3,998.29, Lincoln Park Manor \$1,986.65, or a total of \$10,963.14.

As to the heating, there is a split on the basis of 50% for the Granada. The figures are labor \$1,230, electric power 31,375 k. w. at 1.6¢, or \$502.125957 #6 oil at 4.75¢, or \$5,988.58; miscellaneous repairs \$500, insurance and taxes \$393.09; 15% of \$19,000 investment, or \$2,850, an operating profit for Arlington of \$687.60 and Granada of \$467.77 totaling \$1,155.77; which makes a grand total of Granada \$5,777.83; Arlington \$4,126.88; Lincoln Park Manor \$2,806.63; or a total of \$12,711.34.

646 I made a similar computation on the water which was 8,764,000 gallons of water at 6.8¢ per gallon or \$505.35; 45,616 gallons of oil at 4.75¢, or \$2,167.85; 25,124 k. w. of power at 1.6¢, or \$401.89; miscellaneous repairs \$100; insurance and taxes \$196.55; 15% of the value of the property of \$9,240, or \$1,384.50; 20% of the operating profits, Arlington \$228.64, Lincoln Park Manor \$195.97, total \$484.61, making a grand total of Granada \$2,042.40, Arlington \$1,731.86, Lincoln Park Manor \$1,175.85; all totaling \$5,330.85.

Now, on the power not included in those subdivisions, there was chargeable to Granada 1,432,837 k. w. at 1.6¢ which made \$2,292.54; then the elevator and laundry part of the power was 157,025 kilowatts at 1.6¢, or \$251.24, or making chargeable to Granada \$2,543.78.

Now in the grand total or recap on that split is Granada \$15,440.93, which includes refrigeration, heating, water service and the house lighting and laundry and elevator service; for Arlington \$9,857.03, and that includes refrigeration, heating and water service only; Lincoln Park Manor \$5,969.13 and that includes refrigeration, heating and water service only.

That makes a grand total of \$31,549.01, but to get that we have to add in there the house lighting \$2,543 chargeable only to the Granada.

On the basis of those figures my recommendation as to the amount that should be paid per month as to the Arlington first is this, and this does not include any allowance for interest on investment for the space occupied by the plant, but includes charges as to operating items and for 15% of the investment and 20% of profit on the actual operating for the Arlington and Lincoln Park Manor. For the Arlington Apartments \$9,857.03 per annum or an average of \$821.24 per month. The payment should be made on the basis of \$1,067.05 per month for the months of January, February, March, April, October, November and December, and \$477.50 a month for the months of May, June, July, August and September. In other words, the hotel should receive its compensation on the basis of spending its money. The sums upon which that recommendation is based equal the total amount for the year.

Now in the case of the Lincoln Park Manor, the amount is \$5,569.13 per annum, or an average of \$497.44 per month for the months of January, February, March, April, October, November and December, and \$263.54 per month for May, June, July, August, and September.

Mr. Rosenstone then offered in evidence the report of Mr. Schoff and Mr. O'Brien made objection thereto, and upon Mr. O'Brien's suggestion the Court reserved ruling until after cross examination.

Whereupon said document was received in evidence.

The Witness was thereupon excused subject to further appearance for cross examination.

CLAUDE S. PARKER called as a witness on behalf of the Court Trustee having been first duly sworn was examined and testified as follows:

*Direct Examination by Mr. Rosenstone.*

My name is Claude S. Parker. I live at 525 Arlington Place. I am manager of the Granada Apartment Hotel. I was manager on Monday, May 17, 1937.

Since that date I have been making reports to the Trustee in this case, Mr. Woods, on forms similar to this which you hand me.

648 Mr. Rosenstone then showed the witness Trustee's Exhibit O for identification.

The Witness: I made up that report on the morning of the 18th and delivered it to Mr. Woods as near as I can remember a couple of days later. I handed it to him.

As to the item of deposit on May 17, 1937, in the amount of \$1183.87, I deposited this money with the City National Bank and Trust Company.

The account in which I deposited the money is the regular account which the hotel has with the bank. I did not sign checks on that account. Mr. Edward Hall signed the checks and J. R. Hubbard countersigned them. This money was taken down on the 18th to City National Bank and Trust Company.

I knew Mr. Woods had been appointed Trustee on May 17. I deposited that money in the City National Bank on the 18th because I did not have any further instructions to do otherwise.

With reference to the deposit, or with reference to the \$400 house fund, Mr. Hubbard called me with reference to the \$400 house fund. That is not included in the \$1187. With reference to the \$1187 I don't recall who asked me to take that money down to the City National. I knew that Mr. Woods had been appointed Trustee before I took the money down to the bank. I had a petty cash account in the hotel. The amount was \$400 for the use of the petty cash fund for the front office. On May 17 it amounted \$400 and on May 18 the same. The big majority on May 18 in the account consisted mostly of checks. I turned them over to Mr. Hubbard after I received a receipt for them. I took the account down in the afternoon of May 18th, about three o'clock, as near as I can remember. I know it was after banking hours.

649 Mr. Rosenstone then showed the witness Court Trustee's Exhibit O-1, marked for identification.

"The Witness: Yes, that is the receipt I received from Mr. Hubbard. Mr. Hubbard himself called me and asked me to bring the money down. I told him I had no authority to bring it down. Then he spoke a few words, I don't remember what he said, and in a few minutes he called Mr. Bickel. Mr. Bickel talked to me about that. He was very curt about it. He demanded that I bring it down right away. I said I would not because I didn't have any instructions from the agent, Mr. Edward Hall, at that time. He said if I did not bring it down right away he would send some one out to pick it up and bring it down. I said all right they may come out but I will not turn it over until

I get proper instructions to deliver it to the City National Bank."

I was trying to locate Mr. Hall and get his opinion on what I could do. In the meantime Mr. O'Brien called me on the telephone and told me it was o. k. to release the \$400. I took his word for it that it was o. k. and got a cab in order to get down there as quickly as I could after Mr. O'Brien told me it was o. k. I was not afraid of what Mr. O'Brien said to me.

"The Court: Who did you take your orders from?"

The Witness: Who did I take orders from?

The Court: Who did you take orders from prior to this time.

The Witness: From Mr. Edward Hall of the City National and Mr. Hubbard."

650 *Cross-Examination by Mr. O'Brien.*

The Witness: I worked for the City National Bank as Trustee several months prior to that time. The pay I got was a City National Bank check signed by Mr. Edward R. Hall and countersigned by Mr. Hubbard. As far as I know Mr. Hubbard was employed by City National Bank. He was also paid by City National Bank. I was working under Mr. Hubbard and I assume that Mr. Hubbard was but I don't know. Mr. Hubbard often came out to the premises and gave me instructions about things relating to the operation.

I don't recall that the \$400 cash fund was deposited by the City National. I would have to check back and find out. The \$400 cash fund was not the receipts of May 17 or May 18. It was a cash fund maintained by the hotel.

The receipts which were deposited in the commercial account were the receipts to May 17. I don't recall whether Mr. Bickel told me that the account was to be broken down as of May 17. The bank started in to break the account as of May 17 and the breaking down of the account involved delivery to the new Trustee of receipts from the date of the breakdown and the retention of it by the old Trustee of the funds up to that time.

I don't believe I saw Mr. Woods on May 17, 1937 or May 18, 1937. As far as I can remember it was about the 20th.



*Redirect Examination by Mr. Rosenstone.*

The Witness: The deposit of \$1183.87 as shown in my report of May 17 did not include any moneys collected on May 17. I can't just say how many days it represented, whether it was a couple of days or not. We handled the operations up there, we did not bank every day. Now that may represent two days banking, so far as I know, but I can't say offhand how many days it does represent.

Mr. Rosenstone thereupon handed document to the witness.

The Witness: That report on May 17 included receipts of May 17 and also included the \$400 cash fund. After that deposit was made which included the petty cash fund there was no money on hand at the hotel to operate on. It stripped us clean.

Whereupon COURT TRUSTEE'S EXHIBITS O and O-1 were offered and received in evidence.

Whereupon an adjournment was taken until eleven o'clock A. M. of the following day, Friday, the 24th day of September, A. D. 1937.

Met pursuant to adjournment on Friday, September 24, 1937 at eleven o'clock A. M.

Whereupon the cause was continued by the Court until two o'clock P. M. of the same day, Friday, September 24, 1937.

Met pursuant to continuance Friday, September 24, 1937 at two o'clock P. M.

“Mr. Woods: We have two matters here, your Honor, which have been separately heard up to this point; one is a claim of the Indemnity Insurance Company of North America, claim #8; the other is the petition of the City National Bank and Trust Company on account accrued. At the hearing last Monday on the claim #8, your Honor desired to appoint a court appraiser to appraise certain property which your Honor thought should be definitely established in this record, as to its value at the time of the issuance of the receiver's certificate in August, 1933.

The Court: You say I desired to do that? I had no desire to do anything except as suggested by counsel for the complainant that we appoint some fair and impartial appraiser.

Mr. Hampton: Pardon me, I did not hear the last part, your Honor.

(The Court statement was read by the reporter.)

Mr. Woods: I understand this gentleman is here (indicating) and he is ready to make his report. Now the Court Trustee desires this report and the examination of this appraiser as a witness be a part of both of these proceedings because the evidence is pertinent to both of them with reference to this receiver's certificate.

The Court: You may put him on and examine him and then counsel for complainant or counsel for the mortgage trustee, whoever they may decide between themselves, may examine first and then the other one examine if they desire.

"Mr. Hampton: Thank you.

The Court: Proceed gentlemen.

Mr. Woods: Will you mark this Exhibit O, Court Trustee's Exhibit O-1 and 2? (The documents produced consisting of two sheets was marked 'Court Trustee's Exhibit O-1' and 'Court Trustee's Exhibit O-2.')

Mr. Woods: I have here, your Honor, a bill of sale which was made by International and Industrial Securities Corporation on the 18th of August, 1933. It appears to describe the specific property which was transferred at the time and in connection with the delivery of this receiver's certificate. Counsel and I agreed the other day that this document would be the basis of the physical personal property which this witness would examine and would make his report to the Court. I desire to put this in evidence and so we will have a definite statement of the property itself.

The Court: Very well.

Mr. Woods: This has been marked Court Trustee's Exhibit O-1 and O-2. There are two sheets.

Mr. Hampton: What is that O?

Mr. Woods: O-1 and O-2.

Mr. Hampton: Now there is a statement of Mr. Woods there that I want to—I don't want any misunderstanding on that either, Mr. Woods, that he says he is making a report. I specifically told Mr. Woods we would ask that he testify and we would have the right to cross-examine, not agree that he would make a report."

J. A. LENZ, a witness called on behalf of the Court Trustee, being first duly sworn was examined and testified as follows:

*Direct Examination by Mr. Woods.*

My name is J. A. Lenz. I live at 2551 Ainslee Street, Chicago, Illinois. I am active in business at the present time, repairing furniture. I have been in the furniture business forty-three years. I have bought, sold and manufactured furniture for fully thirty-five years. In 654 some instances that included used furniture, and I have served, on quite a few occasions, as appraiser in used furniture.

I was asked to go up to the Granada Hotel, 525 Arlington Place. I took this document which has been marked Court Trustee's Exhibit O-1 there in order to get the description of the personal property that I was to examine. I made the examination on September 22, 1937, just a few days ago.

I made an appraisal form, a physical examination of the property itself, from what I could see. I guess quite a bit of it is no longer there. There were pieces there of all the different kinds of property that are described in that list, but not all of each kind was there now. I have made a written report.

Mr. Woods then requested that Court Trustee's Exhibit O-3 be marked for identification and handed the Exhibit to the witness for examination.

The Witness: That is my report on this appraisal. I am willing to tell this court and do tell this Court that in my opinion as an appraiser of furniture the value of the items which are listed there as of August 23, 1933 are the several sums which are shown on that sheet.

Mr. Hampton: Objected to.

Mr. O'Brien: Just a minute, I object to that, your Honor, first on the ground that the witness patently does not qualify; and, second, on the ground that he has not had the opportunity and it cannot be possible for him to make that examination; and third, on the ground that he does not specify what basis he has used in determining the value.

The Court: He does not specify what?

655 Mr. O'Brien: He does not specify the basis used in determining value.

The Court: He does not have to do that. You can qualify him, find out what he knows about furniture; what he has done; let him tell the detail of what he has done about it.

Mr. Woods: Kindly tell the Court in detail what you have done in reference to buying and selling of furniture.

The Court: Manufacturing.

Mr. Woods: Manufacture of it and appraisal of it in the years you have been dealing in furniture.

Mr. O'Brien: Well, I want to object to that, your Honor, I have not heard any furniture testimony yet.

The Court: Objection overruled.

Mr. Woods: Proceed.

The Witness: As I stated in reply to your question previously here, that I have had 35 years of actual experience in manufacturing, buying and selling articles outside of my own manufacture. I conducted two display rooms in the City of Chicago here. In each I dealt direct with the public; I have conducted wholesale manufacturing business from my factory in which I have been located over 25 years.

Mr. Woods: That experience was here in Chicago, Cook County, Illinois?

The Witness: Yes, sir, right here in Chicago, right in Chicago.

Mr. Woods: I think that is sufficient, your Honor.

The Court: What else is there? The form of your question was bad. You are asking him—you are asking him if he is willing to state. Just ask him his opinion, what the fair, cash market value is—what it was in August, 1933.

656 Mr. Wood: Have you an opinion from the examination of this furniture, carpets and so forth, as listed on your report—have you an opinion as to the fair cash market value in the City of Chicago as of August 23, 1933?

The Witness: I have.

Mr. Hampton: I object to that.

Mr. Woods: What is that?

The Witness: If you take into consideration—

Mr. Hampton: Just a minute.

The Witness: The way my report on the Granada—

The Court: Just a moment.

Mr. Hampton: I object to the form of the question as assuming facts not in the record. I think the proper



way is to ask the witness what his value as to each one of these things is.

The Court: Oh, now we are not going to fuss about that. We are going to get through this some way. Answer the question.

Mr. O'Brien: I further object to it on the ground he did not say at what time—

The Witness: I have examined several of the items—

Mr. O'Brien: Just—I want the Court to rule on that.

The Court: Just answer the question. Do you know what the fair cash market value of what you saw was in August, 1933?

The Witness: Yes, sir.

The Court: All right.

Mr. Woods: Have you used those values which you know are the values of that kind of furniture—

The Court: Just ask him what the fair cash market value of that kind of furniture was when you saw it; of the kitchen cabinet; of the large china closet, what it was of the in-a-door bed, what it was per yard of Ozite—

657 Mr. Woods: What, in your opinion—

The Court: —and the rest of it is computation: Anybody that wants to cross-examine can.

Mr. Woods: What, in your opinion was the fair cash market value of the carpet per yard?

The Witness: For removal purpose not over 25¢ per yard.

Mr. Hampton: I move—

Mr. Woods: And the Ozite?

Mr. Hampton: Just a moment please.

The Witness: Not over 2¢ per yard.

Mr. Hampton: Please.

Mr. Woods: And the in-a-door beds?

The Witness: In-a-door beds not over \$6.

Mr. Woods: And the kitchen cabinets?

The Witness: Not over \$8.

Mr. Woods: And the china cabinets?

The Witness: Not over \$3.

Mr. Woods: And the totals you have computed here from those unit figures are correct computations, are they?

The Witness: Yes, sir.

Mr. Woods: And you made them?

The Witness: Yes, sir.

Mr. Woods: And the total value of all that property

as you have computed it from those unit figures is how much.

The Witness: \$3,392.30.

Mr. Woods: I offer this document in evidence as Court Trustee's Exhibit O-3.

Mr. O'Brien: Objected for the same reasons heretofore assigned.

The Court: Let it be received.

Mr. Hampton: And for the further reason, it is not the measure, the proper measure of value, removal value.

The Court: What do you mean by removal value, Mr. Lenz?

The Witness: If it would have to be tore out like the kitchen cabinets, if the kitchen cabinets and carpets would have to be tore out, if some dealer would purchase the entire lot to dispose of it in small parcels, it would be considerable expense attached to the removal of things; take considerable labor in loosening up the built-in sideboards and things; tear up the carpets and quite a bit of expense hauling out of there and I am practically positive that no dealer in the city of Chicago, or outside, would make any better offer as to the statement I have made of it.

The Court: Let the testimony stand."

Whereupon COURT TRUSTEE'S EXHIBIT NO. O-3 was received in evidence.

*Cross-Examination by Mr. O'Brien.*

The Witness: I have been engaged in the business of manufacturing furniture between 25 and 30 years, principally upholstered furniture. I have also been engaged in the business of selling furniture. In former years the name of my company was Rand & Lenz, Manufacturers. That was my father-in-law and myself operating the factory. For the past eighteen years the business has been conducted under the name of Lenz Furniture Shop. I was also in the wholesale business while we were conducting the factory which was until about nine or ten years ago, and since about 1923 I have been operating a retail business at the same time. In the wholesale manufacturing business my sales were to retail dealers exclusively, and in my retail business I sold to the general public. I made the same kind of upholstered furniture

as Karpen Brothers, Fenske, Valentine, Siever, and Mah-rer Brothers. I made the same styles in some instances better quality, in other instances perhaps cheaper quality. I sold practically every furniture dealer of any consequence in the City of Chicago and shipped furniture to every state in the Union. I have sold the large mail-order houses in the City of Chicago, and have conducted the retail business where I sold to the public direct.

I never saw one of these kitchen cases at the premises knocked down. These kitchen cases were not of the type that could be utilized in apartment buildings or a house unless they were rebuilt. They are all specially built in there, I think, excepting the steel cabinet.

I do not know the make of the in-a-door bed that was used there. I haven't paid any attention to the name of them because that is very immaterial.

I examined one of the apartments in the building. I noticed the way the in-a-door beds were hung on to the door panels by hardware. The beds are ninety-nine times out of one hundred stock beds. I cannot say that I paid any particular attention to who was the manufacturer of these beds. You can get these beds only from the manufacturers that have the patent rights on it. You can get them from practically any furniture dealer in the City of Chicago through the manufacturer direct. Undoubtedly all that furniture there was made only by one manufacturer.

The in-a-door beds have legs at the foot. At the head they are usually resting on the hinge that they are attached to and are without legs at the head. About 660 the only places a local furniture retailer could dispose of the beds is for a hotel and apartment rooming house. That would assume that the hotel or apartment rooming house had built into it the particular kind of paneling and hardware to which those beds might be attached. All of this stuff has very little value outside of the building.

*Cross-Examination by Mr. Hampton.*

The Witness: I saw these kitchen cabinets. They are still in use in the hotel. They are apparently still in good condition. There is not a tremendous lot of wear showing on them. Of course, it would be quite difficult to detect that even because they have undoubtedly been painted

over on several occasions and for that reason it is absolutely necessary to examine that very closely to find out just what exact condition the woodwork is in. I examined them just ordinary as you can examine them through the finish and by opening up a few of the drawers and things in there to see what condition they were in. They would serve the purpose of a new one in the place that they occupy at present.

*Cross-Examination (Resumed) by Mr. O'Brien.*

The Witness: I did not notice that in the rear of each of the cabinets opening out into the corridor that there was a service door. I only saw the front of the cabinets. In examining them from the front I opened the top door in there to look into it and the construction of things. To the best of my recollection there is no service door in the back of these cabinets. Of course, there would not be any way of coming into it. I looked at the base of the 661 cabinet. There is the refrigeration piping in the bottom which is not included in my report. That is the coils of the refrigerating plant. I have not paid any particular attention to how these were let into the cabinet because they were not included in my report. The cabinet undoubtedly has a floor of its own. I have not noticed it particularly but these cabinets are usually constructed in sections outside and brought in there to be assembled in there. I cannot tell you if this cabinet set on the floor of the kitchen or how it was set in there. To the best of my recollection, the cabinet base of the cabinet is elevated above the regular floor.

*Redirect Examination by Mr. Woods.*

The Witness: I went up alone to make this examination. Mr. Parker showed me such items as I asked for. I never saw you anywhere except here in the courtroom. I don't know you at all. I do not know any of these attorneys here. To my knowledge I have never seen them before.

The Court: What, if any, instructions did the Court give you in regard to this matter?

The Witness: My instructions as best I can recollect them were to try to make a report of valuation of the property in question during the year 1933 for removal purpose or in other words for a forced sale.



Mr. Hampton: Forced sale?

The Witness: Not that those words were used exactly by his Honor, but that was the impression I was under; that if—that my valuation was to be what they were worth to an outside buyer.

The Court: Anything else?

The Witness: That is the nearest to my recollection."

662 Whereupon the hearing was continued to Friday, September 24, 1937 at 2:30 o'clock P. M.

HUGH W. CROXTON, a witness called on behalf of the Court Trustee, being first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. Rosenstone.*

The Witness: My name is Hugh W. Croxton. My business is real estate. My office is located at 4723 Broadway, Chicago, and has been at that address for the past five years. I have been in the real estate business in Chicago since 1901. I started in the real estate business with Henry A. Knott & Company. I specialized more or less in property management and real estate sales and appraisals and renting. I represent today various landlords or owners of property that I am renting their space for. I procure tenants for these properties. During the time I have been in business I suppose I have rented several hundred of them. I specialize in the renting of commercial store properties, hotel properties and apartment property. I operate mostly on the north side from the river to and including Evanston along the shore.

I represent some property owners now that have restaurants in their properties that I have procured tenants for. I have four restaurant tenants at the present time. They are in the uptown district, around the vicinity of Wilson Avenue and Broadway.

I am familiar with the Granada Hotel on Arlington Place. I have known that particular property since it was promoted and have been in it more than once. I was there today. I am acquainted with the renting conditions in the vicinity of the Granada property. I have rented prop-  
663 erties in that vicinity for clients of mine.

Thereupon Mr. Rosenstone showed the witness Trustee's Exhibit C.

The Witness: It looks like a fairly accurate picture of the ground floor of the Granada Building. The writing room is smaller in area than the solarium, I would estimate. I know what the dimensions of the solarium are only from measurements that I made this morning, when I was up there at the property. The measurements of the solarium were about 16.6 wide by 26.3 long. I made measurements of the adjoining room that is designated there "writing room". I made that measurement this morning also. I found that measurement to be approximately 19 feet wide by 26.3 feet long.

Mr. Rosenstone then showed the witness Court Trustee's Exhibit C-1 and called attention to the picture of the "ball room."

The Witness: I consider it a fairly accurate picture of the interior of that room.

Turning to the picture of the lobby of Granada, the room is practically the same as the picture.

The ball room is approximately 30 x 63 feet.

I feel that I am familiar with the fair rental values of store rooms used for commercial purposes and for restaurant purposes in the vicinity of the Granada Hotel, Chicago, Illinois. Referring to the room called "solarium" or designated "solarium" on that map, it could be used for commercial purposes such as an apparel shop, antique shop and millinery shop. In order to use that room for any of those purposes it would not be necessary to make any structural change in the building. There is an entrance in the lobby into that room at the present time, which would serve that room all right for commercial purposes. It would probably have to be partitioned off by folding doors.

I believe that adjoining room designated "writing room" could be used for commercial purposes. It could be put to the same purpose. That room at the present time has only an entrance through the solarium.

"Mr. Rosenstone: Could an entrance be made from the hotel lobby into that room without any difficulty?"

The Witness: It would require some—

Mr. O'Brien: Just a minute. If the Court please, I do not want to keep objecting, but I do want to get two objections; first, that it does not appear that this witness is qualified; second, while I have no objection to the general information for the Court, I do object to any line of testimony which involves structural changes of that building.

Mr. Rosenstone: Well, I asked—

The Court: Well, looking at this plan, it would not seem

there would be very much change to get into that writing room. I would consider myself competent to answer that question, if I went up there to look at it; most any man that has had the experience of a lawyer, real estate man, business man, I think he could answer that question; nothing difficult about it. Let him answer it."

The Witness: From the lobby entrance there is another entrance 20 x 22 practically here just inside of what is designated as a lobby. An entrance could be arranged through there into the writing room. Now there is only one entrance through the solarium. There is also one to the corridor now but they have it closed off with an iron grilled gate which could be opened. It would afford entrance from that point as well as from the lobby direct.

665 "Mr. Rosenstone: What, in your opinion, is a fair rentable value, as of today of the space designated 'solarium.'

Mr. O'Brien: That is objected to, your Honor, on the ground that the witness is not qualified.

The Court: Oh, I think he is qualified. Overruled.

The Witness: \$50 a month.

Mr. Rosenstone: And what, in your opinion, is the fair rentable value of the space marked 'writing room' as of today?

The Witness: \$30 a month.

Mr. O'Brien: The same objection, your Honor.

The Court: Overruled."

The Witness: There is an entrance lobby to the ball room. There is one large entrance and one smaller. There is an entrance from the large ball room into the dressing room. The space in the rear of the ball room marked "service room" is a fairly good sized room. They call it a serving kitchen. It is used for serving meals at the present time or to any club affairs and ball room affairs. In connection with the possible renting of that room for a restaurant, it could be used for the kitchen and in connection with the running of a restaurant the manager's office in the rear of that could be used for the refrigeration plant.

"Mr. Rosenstone: If that service room and the manager's office were turned over to that use would there still be sufficient space for the management and employees who are now running or operating the hotel?

Mr. O'Brien: Just a minute, please. I don't want to interrupt, your Honor. May it be understood that my same objection goes to all these questions, calling for the

witnesses' conclusion, and on the ground that he has not been shown to be qualified.

The Court: Yes, overruled."

666 The Witness: If that service room and the manager's office were turned over to that use there would still be sufficient space for the management and employees who are now running or operating the hotel. They could be accommodated very easily by dividing the office, which is rather a wide room, and the offices could be put in there. The manager has a very large attractive office at the present time. That could be left as it is.

I have remodeled a great many buildings and have had experience over a considerable length of time mostly in rooming houses and in small hotels.

The ball room space, in my opinion, can be rented for a tea room very nicely. In my opinion \$200 a month is the fair rentable value of the ball room, together with the service room and the manager's office, if that were needed for a tea room as of this date today.

I have been active in renting properties during 1934, 1935, 1936, and 1937, and have kept in touch with changes in rental conditions throughout the City of Chicago during that time. I am a member of the Chicago Real Estate Board. In comparing the rental values today with the rental values in 1936, I would say that they are approximately the same. The renting conditions in Chicago are much better today than they were in the year 1935, practically 20% better. With respect to 1934, I would say that they were 25% or 30% better.

I said for the solarium \$50 in the year 1937. For 1935 it would be 20% less, \$40 a month. For 1934 about 30% less, or \$35. I would say that the writing room would be worth \$30 a month today and the same deduction in rates would apply as to the other.

667 As to the ball room and adjoining space, I would say that was worth \$200. I think there would be a great reduction on that for preceding years. I think it would be worth the same in 1936. In 1935 it would be 30% less, or \$140. In 1934 about 50%, or \$100.

*Cross-Examination by Mr. O'Brien.*

The name of my Company is H. W. Croxton & Company. I have been at this address on Broadway about five years. Before that I was at 1027 Beland Avenue. I am a principal in that company.



The general nature of my business is property management, real estate sales and appraisals. I am managing some properties now. They are not in the same general neighborhood, that is 4723 Broadway, they extend at the present from about 1600 north to about 7500 north. I am managing all of these for owners. I am not managing any of them at the present time for court receivers or trustees. I am managing at the present time apartment buildings and commercial buildings. I mean stores, lofts and garages. By apartment buildings I mean flat buildings, walk ups. That describes every type of property which I am now managing. Prior to the present time I was running some properties as court receiver. They were likewise apartment buildings and commercial buildings; also walk-ups. I have managed some with elevators but not as receiver or trustee. I managed a building with an elevator in it at 628 and 630 Sheridan Road which was a five story apartment building containing six room apartments, unfurnished. That is the only one I have managed with an elevator.

668 I have rented space for restaurants. That space was in commercial properties, all except one. The exception was the Iron Lantern in the building at the southeast corner of Wabash and Ontario. The building is a residence remodeled into studio apartments and on the ground floor we had the Iron Lantern Tea Room. That was four stories walk-up. Rented out to commercial artists and others. They were kitchenette apartments rented to students and the like. We provided small stoves and small iron boxes for cooking. It was an old residence remodeled.

At the present time I am not managing any property within a radius of a half mile of the Granada.

As to ever being in the contracting business, I contracted apartment buildings, three story English basement, walk-up type.

I do not know directly anything about the costs of food. In speaking of those monthly rentals, I did not have in mind that the tenant would furnish its own light, water, electric power and other items of that type. The tenants would have a separate meter for their electric light. The tenant would pay for electric power on a separate meter.

Assuming that the patron of the shops or this tea room had to first enter into the hotel lobby and that would be the only entrance to and exit from the shop or tea room, I would still value the rental at the same amounts. I think the ball room space would furnish adequate space for a tea room to take care of any reasonable expectations of patron-

age in that building. It is my thought in the operation of this tea room that the patrons would be made up not 669 only of the residents of the hotel but people of the surrounding neighborhood or vicinity.

I observed this morning the floor levels throughout the lobby and solarium, writing room and the ball room. The materials that they are made of are terrazo mosaic. I am not very certain of that. They are not all of a common level. The ball room is on the same level as what I call the entrance lobby, practically the straight sidewalk level. The solarium and the writing room are on a level with the lobby floor. The writing room is on the same level as the inside lobby. There is an entrance to the writing room from what I call the inside lobby from the stairs to the north.

In arriving at the rental value of \$200 per month for the tea room and the ball room space, I considered that there is a possibility of having a very excellent trade from the building and the surrounding neighborhood, and when a tea room once gains a reputation people from far and wide will go there. In addition to that there are opportunities to rent that ball room for social occasions and for balls in the evening. I mean even if there were a tea room in it. I haven't any idea how many guests there are in the hotel. There are a great many other hotels within a radius of half a mile or so. I judge there are 14 to 16 apartment hotels on Fullerton Avenue within four blocks. I would assume the largest percentage of the people living at the Granada are employed outside during the day. I haven't had a great deal of time to check to see if any other restaurants were in the immediate vicinity of the Granada. I was called up on the telephone at ten o'clock this morning. I checked in a casual way as I drove down this morning. I know that some of these other fourteen hotels have dining rooms. I have checked this morning to see if they were still in operation.

670 I found a dining room in the Patrician Annex, 411 Fullerton Parkway. I know to my knowledge that has been there two years. I understand they are paying better than \$75. It is a very small dining room. I don't know how many people there are in that hotel. It is an apartment hotel.

The Surf Hotel at Surf and Pine Grove has a dining room. I judge that it is just about a half mile north of the Granada. It is a very large hotel. It would be comparable to the large hotels on the near north side.

The Lincoln Park Arms has a dining room. It is on Pine

Grove on the west side of the street south of Diversey. I believe it is about a sixteen story building. It is not a large hotel. It is a very narrow one. I don't know how many guests or tenants it has. I haven't had a chance to check. I went past there this morning. I noticed the sign was still there "Coffee Shop—entrance through lobby," and the space in front is used as a commissary or grocery store. As to the Surf, the Lincoln Park Arms and the Patrician Annex, I could not see the restaurant from the street in the Lincoln Park Arms, and the Patrician Annex is very obscure. You have to enter through the lobby. There is no entrance to the street.

As to the Surf, you enter practically from the street, you enter into a hall that opens right into the restaurant; there is a sign there showing that there is a restaurant.

As to the Lincoln Park Arms, there is a sign on the outside of the building.

As to the way I arrived at \$200 a month as being a fair rental value for tea room purposes of the ball room space, I would say it is my opinion of value.

671 I believe I can secure a tenant who would be willing to pay that. I formed my opinion just by comparing rents that restaurants pay. As to my having any knowledge of the amount of help that anybody operating that space for a tea room would have to employ, I have not had the time to compute all those details. It is my opinion that I could get that rent.

*Redirect Examination by Mr. Rosenstone.*

The Witness: In stating my opinion as to values, I took into consideration that it would include the heat. The radiators are already in the room. There is a stage or platform at the south end of the ball room. I believe it is advisable to leave it in on account of club affairs that could be accommodated in that space.

Witness excused.

"Mr. O'Brien: If the Court please, I wish to renew the motion—my motion in relation to the testimony of this matter and I move that his testimony be stricken on the ground that he is not qualified; also the showing on the basis for his determination of the rental value is wholly inadequate and insufficient.

The Court: Motion denied."

A. S. KIRKEBY, called as a witness on behalf of the City National Bank and Trust Company of Chicago, having been first duly sworn, was examined and testified as follows:

672 *Direct Examination by Mr. O'Brien.*

My name is A. S. Kirkeby. I live in Chicago at the Drake Hotel. I am presently operating hotel properties, being the Drake, Blackstone, and the Sheridan Beach here in Chicago, and the Evanshire in Evanston, and the Town House in Los Angeles. I have operated hotels at least during the last five years. Prior to a year ago I operated a group of approximately twenty hotels, being apartment hotels and small residential hotels here in Chicago. I include in the term "operation" the actual running of the properties, supervision principally.

I am somewhat familiar with the Granada Hotel at 525 Arlington Place, Chicago. I made a short examination of it last Friday for the purpose of this hearing.

Mr. O'Brien then showed the witness exhibit marked Trustee's Exhibit C.

The Witness: This document substantially reflects the layout of the ground floor of that hotel. Without reference to the exhibit, the ball room is immediately to the right as you enter the front door; the solarium is a little further on to the right; the writing room is on the same side as the solarium.

In my opinion, the renting of the ball room space for use as a tea room or dining room would not be a profitable operation in that neighborhood. The building is west of Clark street, which definitely stamps it as a cheaper neighborhood than that district east of Clark Street. In making a survey of the Immediate district west of Clark Street, and I confined my survey to the west on the theory that very few people east of Clark Street would patronize such a restaurant, I found that most of the improvements within two blocks of this property consisted of 673 old two and three story walk-up apartment buildings.

I did notice one seven story apartment hotel in the neighborhood. That was the highest building I saw there. I don't believe that neighborhood would support a restaurant in that particular location. The floor plans of the Granada Hotel show 114 units. From that it could hardly be hoped to get a sufficient volume of business out of the building to support a restaurant or a tea room.



I am quite familiar with the cost of food and the cost of restaurant or tearoom equipment and the cost of labor. Assuming that a restaurant or tea room were maintained in that space, and assuming that the majority of the people are working people, the business would be confined largely to breakfast and supper. With the number of kitchenettes in the building, it is not logical to assume that there would be very much breakfast business.

In a general way, as to the kind of a menu which I think might be maintained in a tea room situated there, I would say for supper price possibly from 50c to 75c and for breakfast from 35c to 45c. It has been my experience that, exclusive of carrying of the equipment investment, a tea room would have to take in a minimum of \$100 a day before it began to make a profit. I mean that to cover actual operating expenses and cost of food, I include in operating expenses the cooks, waiters or waitresses and the manager's salary. In a restaurant of that kind one of those could always act as cashier. As I figured it, the pay roll is a part of the operating charge. The cost of raw food on popular priced meals in that price range would probably run about 50% of the total selling price. I would also include in operation the electricity used for power and for lighting. That would be an operating expense. There would also be cleaning, wear and tear and breakage of glassware and dishes, loss of silverware, laundry of linens and replacements of linens. I would include all those things in the term "operating charges." In this place you would have to take in \$100 a day before you have enough to meet those charges. I would not include rent.

Cooking ranges, refrigerators and coffee urns would be required to operate a tea room such as would be in here. Tables and chairs would also, of course, be a necessity. You will have to have table cloths, napkins, linens, china-ware pots and pans, kitchen utensils, cutlery, and that sort of thing. I would say that it would cost a minimum of \$5000 to provide that equipment and those furnishings; that would not supply any very elaborate equipment but that would equip it in the cheapest manner I could think of.

I would presume that after operating charges, as I have enumerated them, I would have to earn enough money to pay my rent and to amortize the cost of that equipment.

I am told that all of these apartments in the Granada are either dinette or pullmanette apartments. I was also told

that the hotel caters chiefly to resident tenants as against transients. In a hotel like the Drake Hotel it is chiefly transient. The same is true of the Blackstone and of all loop hotels. In the larger hotels, I consider it an essential part of the service to provide dining room facilities and service on account of the large transient business and for the convenience of the guests. All of the hotels with which I have to do are all showing very heavy losses in the dining rooms. I don't know of any of the large hotels that lease the dining room space.

I am leasing the dining room portion in two hotels which I am operating, both residential hotels on the north side, the Sheridan Beach and the Evanshire. The size and the type of the accommodations in those hotels is very similar to the Granada. I would say that the location of the Sheridan Beach on Sheridan Road and the lake, and the location of the Evanshire at Main and Hinman streets, in Evanston, is far superior as a business location to the district west of Clark street where the Granada is located. I did not see a single place of business around the Granada. You must go further north on Clark Street to Diversey before you hit the business section. As to the two apartment hotels whose dining room space I have leased out, I originally ran a dining room there myself at a substantial loss, so I leased them out on a percentage basis. I got from \$40 to \$60 a month rental out of them on a percentage lease, which does not begin to pay for the wear and tear on the equipment I furnish. In the case of the Sheridan Beach we furnished \$15,000 worth of kitchen equipment, dishes, silverware and utensils. In the other hotel in Evanston our investment in the equipment runs about \$10,000. When I took those hotels over they already had dining room space laid out. I would not have constructed the dining rooms. The space was there and equipped for that purpose. They were so constructed fifteen or sixteen years ago when the buildings were put up.

As to my having any way of estimating how much money per day a tea room in this space in the Granada might take in, I would say it would be very difficult to make an estimate of that kind with any degree of accuracy on account of the fact that the amount of business you did would be considerably dependent upon the type of food they served and the service, but in no way can I conceive of a tea room in that particular location doing \$100 a day; that is more than we are doing at the Sheridan Beach and the Evanshire put together.

Aside from any legal restrictions or ordinances, and just considering the prospect of making a success of them as a business, I do not believe it would be feasible to make any of this lobby space for use into shops. I cannot even conceive of shops with a street entrance there making a go of it on account of the character of that neighborhood. As to the suggestion, for example, that there might be an apparel shop, I don't believe it could be operated profitably. As to a millinery shop, I don't believe any type of shop in that location could make a go of it. I would say the same thing as to an antique shop. Assuming that an antique shop was installed or set up there paying \$25 or \$30 a month or \$40 a month, I couldn't see what kind of antiques they could afford to stock at present with because I could not conceive of any one going in there with that type of business. I would say that it is not likely that a tenant going into that particular location would be the type that would carry a stock of substantial merchandise. If a millinery shop, for example, were conducted there without a stock of substantial merchandise I would not say that it would do your general hotel situation any good.

I am operating and have leased out a lot of space for shops in the Drake, some of them are in the inside facing interior corridors with concourses. Those with a 677 street location in general are profitable; those on the inside corridors are not. The difference in the rental that they bring is about ten for one. Our rent on the street side is about ten times what the rental is on the inside corridors immediately joining.

Assuming that any possible tea room or dining room conducted on these premises would have no entrance or exit from or to the street direct, it would change my opinion as to the feasibility of renting this space. It would be a serious detriment on account of the loss of a lot of outside business that might possibly come in through a direct street entrance,—people who don't care to walk into a hotel lobby to get into a dining room. That assumes that you have some people going by. I express it as a business location, where a great number of the public are passing back and forth. My conclusions are reached with reference to the profitable operation by a tenant himself on the assumption that any arrangement of that kind to be permanent would have to show the tenant a profit.

Assuming I was operating the Granada as it is now, I would not attempt to utilize or rent out any of this space

for purposes of a tea room, the reasons being principally on account of the location. It is not in a business neighborhood. The hotel itself has no need for a tea room or dining room with the number of kitchenettes they have there. I cannot see that shops or a tea room in my opinion would in any way improve the appearance of this lobby. I don't say that they would detract from it, it would depend on the character in which they were set up and furnished, of course. The character of a tea room equipped with \$5000 worth of equipment would be pretty cheap.

678

*Cross-Examination by Mr. Rosenstone.*

The Witness: The Company that is operating the Drake Hotel and the Blackstone Hotel is a corporation. I am president and managing director. I am operating the property under lease with an option to buy it, that is right. I am a lessee of the Drake Hotel. The situation is the same as to the Blackstone. I took over the management of the Drake on January 1 of this year, and the Blackstone on April 1st of this year.

Before that time I had been operating hotels in Chicago; for the previous three years, the Sheridan Beach Hotel located at 7301 Sheridan Road; for the previous two years the Evanshire Hotel located at Main and Hinman Streets in Evanston, and I have been in hotel operation for the past ten years but only about four years in Chicago.

Since I have been in Chicago, I have been living at the Edgewater Beach Apartments for the last three years and at the Drake Hotel since the first of January of this year.

I have been in the real estate business in Chicago. I am not a licensed real estate broker nor a member of the Real Estate Board. I was an officer of the Apartment Selection Bureau during the years 1933, 1934 and 1935, which was engaged in that line of business. My connection with it was principally in the financing of leases of hotels. I also represented the landlord in those cases. My negotiations were more on management contracts than actual leases; most of these leases had management contracts. I have never been in the business of leasing property of any  
679 kind in Chicago except what leases I made on my own behalf or my own company.

I stated that I am renting the dining room or the tea room in the Evanshire and the Sheridan Beach on a percentage basis. I believe the percentage is 5% of the gross sales on both leases. That is on gross receipts. There is



no prevailing rental rate for leases of that character in Chicago and the vicinity of Chicago because that would be determined by the neighborhood and the volume of business and the type of restaurant, and whether or not they were permitted to serve liquor.

(Whereupon an adjournment was taken until ten o'clock A. M. of the following day, September 25, 1937.)

Met pursuant to adjournment September 25, 1937 at ten o'clock A. M.

WILLIAM H. SCHOTT, a witness on behalf of the Court Trustee, having been heretofore duly sworn resumed the stand and further testified as follows:

*Cross-Examination by Mr. O'Brien.*

I have testified and I have prepared a report which is in evidence as Trustee's Exhibit R. Prior to the preparation of that report I examined the plans of each of the three buildings. They were furnished to me at the Granada Hotel by Mr. Parker. The plans consisted, in a general way, of architect's blue prints and drawings from which the buildings were built originally. I used them to take off the cubic contents of the buildings.

I did not see the mechanical drawing of the building. I went to the contractors on that to get my information.

680 In addition to examining the drawings to take off the cube, I also made an inspection of each of the three buildings to arrive at the condition.

I made an inspection of the Arlington from the outside to get at the conditions there. I made an inspection on the inside. I saw the tunnel situation. I went to the Arlington to make this inspection prior to the time that I came to my conclusions. It was about the first of September.

I did not pay any attention to the occupancy. I did not see anybody, I just walked through. I mean I went on the inside to take and see the general character of the inside of the building, but from the standpoint of making certain determinations I worked on the outside entirely. I went through several of the floors, just down through the corridors. I went to the Lincoln Park Manor the same way. My inspection at the Lincoln Park Manor was no different from that at the Arlington. It was the same at the Granada with the exception of the boiler room inspection. In my

inspection of the buildings and equipment I did not pay any attention to the square foot radiation, I had a list of radiation furnished me.

Of my own knowledge, the amount of radiation in the Arlington is approximately 9200 feet. I had a schedule of it there. I paid no attention to what the square foot radiation figured except from one standpoint. I figured out the requirement of the building. If the building is properly set that gives you one factor, and if it is underset, then it will cost 22% more to heat on a 75% basis than on a 100% basis. I mean by set or underset, for instance, if the building required 1000 feet of radiation and they only had from 600 to 700 feet of radiation set it would cost 22% more to heat that building than if it had the full requirements. I go by cubic contents and work from there down.

I have forgotten now who the architect was that made those drawings; I did not pay much attention to that. I did not notice that at the time because they were furnished to me; I would not say whether it was Olsen & Urbain or not. I paid no attention because the drawings given me were certified as the drawings the building was built on and that was the controlling fact with me. I can get a pretty fair idea of the construction content of the building by inspecting proper architect's drawings.

Assuming several different buildings having the same aggregate cubic content but built in different styles as say the first one a perfectly rectangular building and another one built on the type of the Field Building here with a tower and some on the type of the Edgewater Beach, let us say, in my opinion, for the purposes of radiation and cost of providing heat the amount is not consistent in each one of the types and there is a big variation.

I did not see the figures furnished by Mr. Lewis until after I made my conclusion and it was put in shape and then I got hold of the Lewis report. The Lewis report made mention of a number of square feet of radiation in the Arlington. He gave the list of the radiation in the various buildings. I did not attempt anything except I used some figures on the value of the property. From what my own conclusions were based on, in my judgment, Mr. Lewis arrived at substantially a correct figure for the amount of square feet of radiation figuring from his standpoint, there is a difference in engineer's operations. I used Mr. Lewis' report for data as to the cost of the heating and

*Statement of Evidence.*

refrigerating equipment on the premises for the reason that his figures were so close to mine. I adopted them because they were substantially correct.

My figures were based in arriving at the cost of the equipment on the refrigeration on the basis of what the contractors charged for building the plant originally, plus the usual overhead items covering all the costs. The same is true for the heating plant and the power installation.

683 In the Arlington property there are 48 Pullman units and 29 Kitchenette units. As I remember, there are 70 odd rooms, but I did not go by rooms in making this data.

In the Granada there are 45 Pullman units and 51 Kitchenette units. As I remember it, there are about 109 rooms. I think that the Granada had more rooms per unit than the Arlington.

In addition to what I have just testified to, I was not given Trustee's Exhibit "Q" by Mr. Tilney before I started. That was given to me after I had written my report. I did not see that until after I had written my report because I called for it for comparison and it was not furnished until after I had written my report. I went to the office and Mr. Tilney furnished me data on operating cost items as I called for them. I have my consolidated work sheets with me. I did not obtain data from any one else except Mr. Tilney. I asked for and procured pay-roll, electric bills, oil, and water bills for maintenance and miscellaneous items. These different classes include all of the several data which I have made. The entire operation is in the Granada and I determined the operating costs of that plant. The bills for electric power and light were not the bills for the service in all three buildings. The power all comes through the Granada. The light of the Arlington and the Lincoln Park Manor are independent. The power bills, however, for all three properties were billed to the Granada. These bills likewise included all of the Granada charges for power and light outside of heating and refrigerating plant. The bills were split into three sections. The halls of the Granada are metered independently. The general house lighting is on a meter of its own. The power is billed as a unit and had to be subdivided by department. 684 The water bills come to the Granada and cover water for all three buildings. The same is true of the oil bills.

From Exhibit "R" that I figured, I said:

"Appraisals made heretofore on the cost of the installation are accepted and used by me in providing for interest at 5% cost, 15 years amortization as 4.3%, maintenance and supplies at 5.7%; total 15%."

That is exactly the same basis that was used by Mr. Lewis in his report.

It is usual in an operation to set up reserves for the miscellaneous items. The statement includes all of the maintenance and supplies in the boiler room, and in the net part of that investment would be the amounts that will sustain the property from the standpoint of operation over its life.

It is not my understanding that the Granada maintained the pipe lines of the Arlington. The Arlington maintained their own pipe lines, within that 15% are the maintenance charges whatever they are from now on.

Mr. O'Brien then stated to the witness that on the first page of the report he states that heating costs are divided on a basis of square feet of radiation required to heat each building.

The Witness: There are no figures in the report showing the square feet of radiation required to heat each building.

I did not know how many people were occupying the Granada at the time I made or procured this data, but the building was occupied completely with the exception 685 of one apartment. As to the Arlington and Lincoln Park Manor, I did not have any record as to the occupancy. I say in the report that the hot and cold water is proportioned by the number of apartments. It would make a difference in the ultimate figures how many people were occupying units as to the consumption of hot and cold water. In the case of apartment residence, ordinarily we figure 30 gallons per person per day.

The heating and refrigerating plant was installed in the Granada in 1924. I don't know what month. The report states that the aggregate cost of the plant was \$44,410.00.

My report made this month is intended to reflect and indicate the proper charge for service to the two other properties during the years 1935 and 1936. In the year 1935 the plant was 11 years old. The 15% item covers the depreciation reserve and I am establishing the facts as near as I can get at them for rates from now on. I did not depreciate the plants from 1924 to 1935.

The refrigeration plant in the Granada is a compressor



type with Brine circulation. It was made by Brunswick-Kroeschell. It was a standard type of refrigeration plant at the time it was put in. Today you would put in direct connected units instead of belted units. That is about the only difference. The compressor design would be about the same. It is customary to write off a refrigeration plant in 15 years. You would have a greater depreciation in the circulating system with brine than you would have with ammonia. There is brine in the Granada. I did not pay any attention to the brine pipes in the apartment themselves. I confined that to the plant itself.

686 I am not able to tell the court the actual physical condition of those pipes. I noticed how the brine pipes were hooked up with the boxes. The coils were set in the box in the usual form. The brine comes from the central plant circulated by circulating pump. I did not pay any attention to how it is connected with the box. They were standard connections carrying the brine to and from every coil. The brine is piped into the apartment through circulating pipes. I didn't pay any attention to how the pipes entered into the apartment because I was making a determination of that at the power plant and the system had to absorb everything.

The refrigerating plant which was actually installed would not be adequate in capacity and design to furnish service to more buildings than those it is presently servicing. The boiler plant would furnish more by design and installation. The boiler plant could carry a 50% increase.

I do not know whether or not Mr. Máteer at the time of the erection of these three buildings had in mind the erection of two others. I was simply considering the three buildings.

On page 2 of the report I say that the boiler room equipment occupies 7900 square feet, or 86,000 cubic feet of space, which costs 70 cents per foot, or \$60,200.00. By "space" I mean space in the basement. The basement space is divided up; the cold water tanks and the pumps on the heating system are in one room, the hot water tanks and the circulating pumps are in another room, and the boiler room is another room. There are partitions in 687 the basement. There is one between the meter room and the boiler room. The boiler plant proper is occupying three different rooms. In the other end of the building there are other rooms, but I did not pay any attention to them. I only took the space actually occupied by

the plant. It is an ordinary basement used in an apartment hotel building.

As to the cost per cubic foot of construction of the upper space through the apartment rooms, I figure 70 cents a cubic foot per room through the whole building would be a fair price, and use the same figure for the boiler. The other building construction would be a good deal higher on that foundation, because the foundation and all that is carrying the building and it is only fair to take and charge to this department the average of the building. I am speaking now of the space which the plant occupies. I did not take into consideration in arriving at this figure the cost of the foundation walls. I took the average of the building. In my judgment the Average cost of construction was about 70 cents per cubic foot, back in 1924, for a building of this type.

After depreciating that \$60,000 odd, down to \$45,472, I point out a potential interest there of 5%, amounting to \$2,287.60. It is my judgment that that is an item which should be considered in fixing the ultimate charge. As to whether or not that basement space is rentable space, as a general proposition, it may or may not be used. It could be converted to a lot of things if you found somebody that wanted to use it. It is usually built for the purposes it is now being used for. I cannot think of any tenant who might want to rent it.

688 I have not set down in my report the cubic content of the different buildings.

I would not say as a matter of fact since 1935 that this refrigeration plant was obsolete and I do not think it will be obsolete for a good many years, for a plant of that kind with ordinary maintenance could be kept going for a good many years. If I owned the Arlington property, taking it on the cost basis, I would prefer to operate the unit system rather than the brine system. I think the investment would be less as to the unit system and the operating expense would be less. I think the same is true with respect to the Granada and the Manor. I would say that it would probably be around 25% less.

At page 4 of the report I say that the total cost of refrigeration as to all three properties is \$10,963.14, including therein 20% profit. I would say off-hand that to buy new electric boxes, individual units of the General Electric type, of the dimensions, three and four feet boxes, taking in the cost of the boxes, wiring, and everything, the cost would be probably \$125 a unit. You might buy the

boxes for \$80 a box, but you have the wiring to take into consideration.

An individual unit per box could be operated for around \$2.50 per month average, by that I mean, the electricity; for actual operation, probably \$1.75, including maintenance and everything.

On page 4 I said that the annual charge to the Arlington for refrigeration alone is \$3,998.29. I would say that the cost of providing new individual boxes, including all operating charges, could be met within three years by the savings. I would say it would take about 60% of the 689 above figure to operate the boxes, if you maintain the same size boxes you have been operating. You may have 5 feet and 8½ foot boxes. If you get into the smaller size you would reduce the cost materially. You have 76 boxes in the Arlington which would cost \$7,500 for new boxes.

"Mr. O'Brien: And assuming that it cost you a dollar per month per box for power, do you think you could buy those boxes and have them paid for, including your operating, for three times the annual charge to the Arlington, as shown by the report?

"The Witness: You have this difference: you would not get the power rate over there you are getting here. This power rate is very peculiar; it would cost you pretty near twice as much for power."

The Witness: I won't figure less than \$2 a month to operate your boxes, under this conditions. Assuming that it was \$1 a month, that would be \$12 a year per box, but you cannot operate for one dollar. If you assume that it was a dollar, you have 76 boxes, which would be only \$912 a year.

Speaking of the size of the box, as a matter of fact these new boxes are much more efficient in performance than the old brine box. They are a good deal sightlier, and I would say more desirable for the tenants. As to whether or not ice cubes are made a lot faster than the other way, I would say that is only a question of temperature. I don't think it makes much difference in the time. The freezing time would be about the same if you carried the same circulating temperatures. In a brine box it takes two or three hours to make ice cubes. In an electric box I 690 would say it is purely a question of temperature. The control of temperature in the brine box is from the plant. The tenant can set it higher or lower.

I looked at the coils in the brine boxes. You have the

same circulating temperature in your system. It is continuous all the time. I have pulled out lots of ice trays but not in this building.

If you put individual boxes in, you would save the maintenance of the circulating system as, of course, you would not have the burden on the central plant. The boxes in the Arlington and in the Manor belong to those buildings. They do not belong to the Granada.

I think it is reasonable for a building to have a rate of 20% on its investment. You have a hazard of maintaining a service and you never know what is going to happen and they are entitled to something for the service of rendering the service to the other consumer. A contractor engaged in public work encounters and experiences much bigger hazards, but when the job is through it is through. This is continuous. I didn't go by the rate of profit on a contract for the building of one of the PWA works. It may be standard with those people but it isn't standard. I have been a contractor all my life. As to the furnishing of service by public utilities I think a fair rate of 20% was the minimum. Take the original contract for the furnishing of power to the railways here. It was founded on an operating cost after the max demand charge at an operating profit of 20%. I think that is still true today. The 691 heating plant itself is more or less fool-proof, but you are entitled to consideration for services, and all that. This Brunswick-Kroeschell plant is a pretty good plant. It took a very nominal amount of maintenance for either of the plants for the last two years, which I took.

As far as the Granada is concerned its entire hazard lies in the central plant, with the piping distributing systems of the Arlington and the Lincoln Park Manor. If anything happened to them it would be their hazard and not the Granada, but the Granada has to take care of its compressor and its piping used in that system and its various devices for operation.

Mr. O'Brien: "Well, let me ask you this. I want to find out where these two different situations would make any difference in your conclusions.

"Supposing that the Granada and the Arlington and the Manor, prior to this installation of the plant at the Granada, entered into an agreement subject to nothing—I mean subject to no prior claims—that the Granada would build this plant and that the Arlington and Manor would, as long as they maintained the heating and refrigerating plant, buy this service from the Granada. Assume that situation.



"Now assume this one: That the Granada put in this plant without such agreement, and then went out and sold the service to the other two buildings.

"In your judgment, would the price to be paid for the service be any different in those two cases?"

692 The Witness: "Yes, they would be. If it is founded upon a contract so that they would know they would have an income from the use of that plant, it would be lower than if they built a plant and had to go out and get the load afterwards,—because you would have to allow for a partial loan instead of a full load. You have a fixed operating amount regardless of load."

Mr. O'Brien: "Which would be lower?"

The Witness: "The lower would be where the contract was made fixed to operate."

Mr. O'Brien: "What would be lower?"

The Witness: "The one you are operating now."

Mr. O'Brien: "No, I mean what is it that would be lower?"

The Witness: "You would have a fixed condition, then, to guarantee your operation, and in the charges made to the consumer it would be lower than if they came in after a plant was built, where they become one of a general list of consumers."

"For instance, if I have a situation here of a dozen buildings that I am going to heat, or whatever may be, that is a fixed load and it is going to be founded on operation over a period of years to absorb all of these items. That would fix a lower rate than where I have to operate and carry the burden—"

Mr. O'Brien: "Sure, I understand all that. But do you think you would stand as good a chance of getting the other two buildings to carry your original investment when you put in the plant without any agreement?"

The Witness: "You absolutely have to."

Mr. O'Brien: "Well, do you think you could?"

693 The Witness: "You do get it. In the first place, you wouldn't build a plant depending on two buildings, built right alongside of you, without an agreement, because you have to start in with the idea that you are not going to get them. Take and build any plant in any section of the country and start in. You have to assume that you haven't a customer and you have to go out and get them. It is going to take a period of years to get that load. You have to carry your property, and everything else the same, and in building your loads the cost

will be materially higher than where it is on a fixed proposition."

Mr. O'Brien: "You would if you want to make an earning and get your cost back?"

The Witness: "Absolutely."

Mr. O'Brien: "But how about the other fellow who doesn't have to buy from you when you have a plant that is adequate to service it?"

The Witness: "If the plant is established for its own use, and has surplus capacity—"

Mr. O'Brien: "Couldn't you minimize your operating cost by selling service?"

The Witness: "You could to this extent, just as the figures show. All that was taken into consideration here was actual operating conditions and costs. Then added to that is a 20 percent profit on the operating item itself, and added to it the 15 percent to cover the proportion of the investment which these buildings were using."

694 Mr. O'Brien: "Yes, that is right. In making up your report you charged the other buildings with the proportion of the investment, just as though they had an agreement in the first instance."

The Witness: "Absolutely, and that investment would be much lower than if they had their own plant."

The Witness: On page 3 of the report the item under refrigeration expense of \$600.00, miscellaneous repairs, and on page 4 under the heading "Heating Expense", the item of \$600.00 for miscellaneous repairs, and on page 5 under "Water House Service Expense", the item of \$100 for miscellaneous repairs, are over and above the maintenance which you first mentioned which was included in the 15%. Those are items that happened in 1935 and 1936 and it was a matter of expense chargeable against those years. That is what was actually spent for maintenance those years without any reserve and was included in the 15%.

On page 3 of the report, the first charge under refrigeration expense is water, \$1,431.40, which is for the refrigeration of all three buildings. In 1935 the actual water bill was \$1,992.31, and in 1936, \$2,057.44. I mean all water used at the Granada, Arlington and Lincoln Park Manor for any purpose. I think that the water bill for those three buildings, exclusive of refrigeration, runs approximately \$600.00 a year. If you will take from the Arlington 33.43% of 8,764,000 gallons and multiply it by 6.8 cents, it will give you what the water will be by

itself. As to whether or not you save money on the water bill when you have an electric unit, the figure doesn't apply on that. You are absorbing your share of the water expense due to the refrigeration plant.

695 This water bill here purely applies to the cold and hot water. I have allocated to refrigeration expense \$1,430.00 for water, and there is only \$595.35 to the three buildings for water only, and of that item you take the percentage I gave you. It doesn't matter what kind of ice system you have, you have to operate your condensers and the big volume of water is used by the condensers. You would eliminate the water so far as the ice box is concerned if you had an electric unit.

In 1935 the over-all bill on the Granada for light and power was \$7,278.02, and in 1936 it was \$7,356.82. It averages about \$7,400 a year. In that \$7,400 per year I charged \$3,869.16 against the refrigeration expense and I charged \$502.00 against the heating expense, making a total of about \$7,300. The average house light bill for the two years was \$2,292.54, and for the power elevator and laundry it was \$251.24.

By house lighting I mean the lighting of the apartments.

I did not check the books of the Arlington to find out what the annual charge is for the light and power there because it didn't enter into the problem.

I think the unit price for the corresponding items at the Granada would be higher than the Arlington, due to the fact that you haven't got the load line to get the rate. In other words, the Granada has a rate founded upon a max demand charge of \$2.00 per month; \$24.00 per year for the max. It has a "c" rate. I have forgotten how much it has to use in order to get a "c" rate.

696 Assuming that the Arlington is getting the "c" rate, you have this difference. The rate would be bound to be lower for this reason—you have a maximum demand that gives you only 6,000 kilowatts per month on the 2.1 rate. The average is 1.6. The power gives you the load to pull the rate down. If all three buildings were furnishing their own heat and refrigeration, the light and power charge would be higher because you wouldn't get the load line to pull it down to the lower brackets. Assuming that they were all operating on the same rate and had other common characteristics, then they would have the same proportion to the amount of

current used. The Granada would use more current. It charged more all the way through. It is standing 50% of the power of all of their own lights. Assuming they were each operating their own services, the Granada would still have a larger light bill than the other hotels because it is bigger.

I think the charge of \$251.24 is a proper charge to be made for the power furnished at the Granada for the operation of its own elevators and its laundry. It has only one elevator. I took and figured out the usual mileage in a building of that kind to establish the power rate. I took into consideration the vacuum cleaning system at the Granada, that comes off the house lighting system. Forgetting the refrigerating plant and the heating plant the only other uses for power at the Granada were simply its laundry and elevator.

The pumps are all on the power section. There are three pumps on the water, that is on the cold water, and there are two on the hot water, and there are three pumps on the vacuum lines. The pumps on the hot water 697 are three horse power. The pumps on the cold water to my recollection are ten. My recollection as to the vacuum lines, the pumps are five-horse. They are small motors, and there are ten on the circulating to the ice system.

In terms of money, the power necessary to run the passenger elevator at the Granada runs about \$15 per month. I imagine the horse power on the motor on the passenger elevator is about 25 horse. I didn't check it because it is only a small elevator and not high speed. I did not check the horse power on the various pumps, but I think that the horse power given is correct. I know they are in most of them. On the pump on the cold water system, I have forgotten whether they are 10 or 15 horse, but they are operated with little and don't require much power.

These are all the sources of power that the Granada uses for its own purposes exclusively. Just the general system there.

The aggregate of the power allocable to refrigeration only is \$3,869.16; the heating is \$562.00; the water is \$401.99; that totals \$5,024.88 for the power and \$2,292.54 for the light. My total of all charges to the Granada for light and power is \$7,317.42. The two items \$2,292.54 and one of \$251.24, make up the Granada's light and power, making a total of \$2,543.78.



The item at the last page of \$2,292.54 for house lighting is the Granada's house lighting, the meter readings show that. There are two meters for lighting in the Granada, one for the halls, and the balance of it the general lighting of the house, and that goes to make up that item of \$2,292.54. I got the meter readings from the bills.

The bills were in a lump sum covering everything, 698 covering of the current furnished to the building for lighting and power consumed by the Granada for its own use and for servicing the other buildings. They show which is power and which is house lighting and which is the halls. Had to calculate in some way, outside the building itself, the amount consumed by the Arlington for its power exclusively, and that was shown by the meter readings. The bill does not show the entire power consumed by the Granada. It gives you the sum total of the hall lighting, house lighting and power. The power is all consolidated in one bill; that is the only item that had to be segregated by departments. I had to break down the power bill. When I broke that down, I concluded that the amount of power consumed by the Granada solely for its own benefit, was \$251.24, and on the breakdown, I allocated to refrigeration 77%, heating 10%, water 8%, elevator and laundry 5%, which applies to the item of \$5,024.88.

I have forgotten what the horse power of the laundry motors is. I examined and arrived at the operating conditions of that plant and that was my guide in arriving at my conclusions when I got the total amount of expenses they had been put to.

On the cold water end, they have three pumps. One is not used except only a little. The pressure of the city takes care of it. You have the same on your brine circulation. When it comes to the laundry motors, they have only one which drives a shaft or something. The horse power of that does not amount to much. It is all included in the amount of power they consume. It is a matter of hours of operation of that plant. It is included in this report here. I specify that the electric elevator and the laundry's total amount of power was 157,025 kilowatts, and with the rate it makes a total of \$251.24. I checked that on the basis of hours of operation of whatever department it might be. The laundry only runs so many hours a week and the elevator during 24 hours will only operate so many car miles. I did that on some work sheets but I haven't got those with me.

I have only referred to the passenger elevators. There are two elevators but only one passenger.

So far as I know the Arlington has its own radiators, steam pipes and piping of all kinds. From my knowledge as an engineer in order to put in in the Arlington its own heating plant of standard type and adequate for its own purposes, I would say it would require 125 horse power plant, which ordinarily would be divided into two units. Without knowing anything about where you would locate that and what the stack condition is, I would say offhand it would probably cost \$7,500 or \$8,000 to put in a plant completed.

The costs today are a little higher than they have been within the last four years.

*Redirect Examination by Mr. Rosenstone.*

The Witness: I met Mr. Woods, the Trustee, some two or three weeks before this matter came out. It was before he talked with me about it. When he gave me his instructions to go ahead and make this survey he did not indicate to me in any way what figures he wanted from me.

700

*Recross Examination by Mr. O'Brien.*

I would say probably around six weeks ago, Mr. Woods first talked to me about the general situation but he did not get down to anything specific. I finished my report on September 10th. Prior to the making of the report I did not in any way indicate to Mr. Woods any estimate of the fair market of the service from the Granada to the Arlington because I didn't have anything to go by.

CLAUDE S. PARKER, recalled as a witness on behalf of the Board of Trustees, having been previously duly sworn, was further examined and testified as follows:

*Direct Examination by Mr. Rosenstone.*

The Witness: My name is Claude S. Parker. I testified here the other day.

Mr. Rosenstone then requested the Trustees' Exhibit O-3, O-4 and O-5, be marked for identification. Documents were accordingly marked.

*Statement of Evidence.*

The Witness: I testified that I made certain deposits at the City National Bank and Trust Company on or about the 17th or 18th of May, 1937.

Mr. Rosenstone then showed the witness the Trustees' Exhibit O-3 for identification, and asked the witness to state if that is the deposit slip covering the checks that he deposited at that bank.

701 The Witness: This deposit slip represents the cash receipts of the front office as of May 17th and evidently deposited the following day, the 18th of May.

Mr. Rosenstone then showed the witness Trustees' Exhibit O-5 for identification.

The Witness: That deposit slip is made out in my handwriting. It was made at the bank. It represents the \$600 payable to the Granada by the Arlington for the service of heat, refrigeration, hot and cold water. I got that check on the 17th. I went to the bank with it the same day. I don't recall if any one from the bank called me about that check. I think, as near as I can remember, Mr. Hall suggested to take it right down. I gave the check to Hubbard to be countersigned. He told me to take it downstairs and deposit it right away. I made out the slips in pencil.

Mr. Rosenstone then showed the witness Trustees' Exhibit O-4 for identification.

The Witness: These checks represent the house fund used at the Granada Hotel for cashing checks and petty cash fund for the benefit of the guests. They were taken to the bank some time after 3 o'clock on the 18th. It was with reference to that deposit that somebody told me that if I didn't bring it down they were going to come out and get it.

Whereupon, the said documents marked TRUSTEES' EXHIBITS O-3, O-4 AND O-5 for identification, were offered and received in evidence.

Whereupon, an adjournment was taken until Monday, the 27th day of September, 1937 at the hour of 10:30 o'clock A. M.

702 Met pursuant to adjournment, September 27, 1937 at 10 o'clock A. M.

IRVING L. HERTZMAN, called as a witness, herein, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. O'Brien.*

The Witness: My name is Irving L. Hertzman. I was associated with Central Republic Trust Company in 1933. I am at present with the City National Bank and Trust Company primarily as appraiser and also as an engineer of special problems that come up before the property management organization.

I had occasion during the year 1933 to consider problems in respect of the amount to be paid by the Arlington to the Granada for heat, refrigeration, water and power.

Mr. O'Brien then requested the City National's Exhibits 2, 3 and 4, be marked for identification.

Mr. O'Brien then showed the witness, City National's Exhibit 3 for identification.

The Witness: I had that before me at the time I gave consideration to the matter. That is a report made August 14, 1929 by Mr. William R. Lewis to Cody Trust Company. I first considered this matter about the first of December or the latter part of November, 1933. At that time the Arlington was paying approximately \$900 a month to the Granada for that service. It was partly as a result of my investigations that that charge was cut. For the purpose of this hearing I considered the same problem 703 and assembled any data which might be of use to the Court in determining that property.

Mr. O'Brien then showed the Witness City National's Exhibit 5 for identification.

The Witness: That is a compilation of the figures I took into consideration in arriving at a determination of the fair amount to be paid, a total from the audit figures, the pay-roll, electrical charges, the cost of fuel oil, water, the total mechanical repairs and maintenance, making a summation of the entire cost. I took into consideration the cost of the lighting bills for the Arlington Hotel and also deducted from the total cost of estimated electrical consumption, consumption for house use of the Granada, arriving at a total corrected cost of furnishing the mechanical heat, refrigeration and water to the Granada.

I then allocated the cost to the Arlington which should



be a fair direct cost to the Arlington for construction cost basis.

As to the items of cost, I have the audit figures and statements, which I deem to suffice. The audit figures were made by Barrow, Wade & Guthrie for the year 1932 and through the month of November, 1933.

In the recent examination, I have five months of 1932, all of 1933, 1934, 1935, 1936, and have taken the first four months of 1937.

For the years 1935 and 1936, I determined, and found the pay-roll charge to be \$2,460 each, and the total electric light bills \$7,510.83 for 1935, and \$7,759.19 for 1936. As to fuel oil, \$7,278.62 for 1935, and \$7,356.82 for 1936. 704 As to water, \$1,997.31 for 1935, and \$2,057.44 for 1936.

As to mechanical repairs and maintenance \$1,921.27 for 1935, and \$212.00 for 1936. Those are the actual charges for those items appearing upon the books of the Granada. From vouchers which are recorded in the audit statements which are taken from the voucher costs, they are the actual charges in my estimate of what they should be. The electrical charge includes all electrical charges for the Granada, including its own light and power. The total charges for the year 1935 were \$20,338.03 and for 1936, \$19,845.45. I found for those years that the Arlington itself for its own light and power paid \$2,399.60 for 1935, \$2,427.77 for 1936. Those payments were made for electric light and power furnished direct to the Arlington by the Edison Company and billed to the Arlington. It was for the lighting of its apartments, corridors, lobbies, the operation of its own elevators and other mechanical equipment not connected with this Granada plant.

I have estimated the charges to the Granada for light and power consumed by it for its own purposes.

I went about estimating that by taking it on a comparative room basis. There are 128 rooms in the Arlington, 211 rooms in the Granada, and 81 rooms in the Lincoln Park Manor, giving a total of 420 rooms for the entire property, giving 30½ per cent of the total rooms to the Arlington, 50.3 per cent to the Granada and 19.2 per cent to the Lincoln Park Manor. I took the ratio of practically 5 to 3 for the ratio of the light of the Granada to the Arlington. I took the ratio of 5 to 3 due to the fact that the power consumption would be practically in the ratio of your total number of rooms and the number of rooms run about 5 to 3. 705

I applied that ratio to the total light and power bills of the Granada and found the cost to the Granada to be approximately \$3,800 for the year 1935, and \$4,000 for the year 1936. That relates to light and power used by the Granada for the Granada's own purposes exclusively.

The Granada uses power for its own purposes exclusively for two elevators, one passenger and one freight. The passenger elevator having a 20 horse power motor and the freight a 7½ horse power motor, and for a laundry which has a 5 horse power motor, and for a few motors in the ball room for ventilation purposes, and a pipe organ, and there is a sump pump in the basement for house use and a vacuum cleaning system which has a small motor. The Arlington has two elevators, a freight and a passenger. They are the same size and have the same motors. The Arlington has 90 apartments, and the Granada 114. The relative percentage of rooms per apartments as between the Granada and the Arlington is approximately 1.35 to probably 1.38 rooms of the Arlington per apartment, and approximately 1.8 rooms in the Granada per apartment.

The Granada has a considerably larger amount of lobby space than the Arlington. I included in the lobby space the ball room, the solarium and the writing room.

Due to the number of larger units you have more occupants per apartment unit in the Granada than you 706 would have in the Arlington. There is no way of getting the exact figure per apartment due to the fact you have bedroom apartments—more bedroom apartments in the Granada per unit, you have utilization of more rooms, because in the Arlington with your kitchenette apartment units, or your Pullman kitchens, you have a room efficiency in the living room, but where you have bedroom apartments, you have room efficiency both in the bedroom and in the living room.

After that operation to determine the light and power charge to the Granada for its own purposes, I reached a correct cost total to the Granada for the years 1935 and 1936. The cost to the Granada for all the pay-roll, power, electrical, fuel oil, water, mechanical repairs and maintenance for 1935, amounting to \$16,538.03, and for the year 1936, \$15,845.45. There is no way of telling how much of that total cost was allocable to the Arlington only by a point of arbitration and possibly by taking into consideration the number of units, or number of rooms, and a basis of radiation in the building.

I arrived at the actual cost to the Arlington and Granada for 1935 in the amount of \$4,960 and for 1936 in the amount of \$4,750 by taking into consideration the cube of the three buildings, the number of rooms involved and the radiation as reported in Mr. Lewis' report of 1929. As to the 707 total cube, I had the cube figures before me and I checked the measurements so that the measurements satisfied me, and I used the cube figures as were given. For the Arlington they were 576,418 cubic feet, for the Granada 1,040,356 cubic feet, for the Manor 434,181 cubic feet, giving a total of 2,050,949 cubic feet. On the direct cube basis the percentages I approved to the different properties were 28 per cent to the Arlington, 51 per cent to the Granada, and 21 per cent to the Lincoln Manor. I didn't figure out the cube figure according to the rooms. In figuring the percentages on the basis of square feet of radiation I used the figures supplied by Mr. Lewis' report as being correct at that time. Since that time there has been a new calculation of the total amount of radiation on the building so these figures should be revised to that correction. Not having checked the other buildings I used the figures as supplied by Mr. Lewis' report in 1929 as being correct although there is a difference. Mr. Lewis said there was approximately 8,500 square feet of radiation in the Arlington. Since Mr. Lewis' report I have not measured the square feet of radiation in the Arlington but we have had it done. Mr. Brooke and Mr. Hand did it. Those two engineers checked, I think, within 20 or 25 feet on the amount of radiation of the Arlington Building. I did not adopt those figures for use here. I used the figure as supplied by Mr. Lewis due to the fact that I didn't have any other figures. From that data I found the actual square feet of radiation in the Arlington to be 26.4 per cent to the Arlington. The actual number of square feet of radiation in the Arlington is 7,038. I took Mr. Lewis' figures in making up this Exhibit 5 for identification, 708. as to the percentages I got 26.4 per cent for the Arlington, 54.5 per cent for the Granada, and 19.1 per cent for the Manor. On the cubic basis and on the basis of radiation, I gave slight leeway towards the Granada and charged 30 per cent of the cost. The room basis amounted to approximately 30½ per cent of the total cost allocated to the Arlington, 50 per cent to the Granada and 20 per cent to the Lincoln Park Manor. The cube amounts to only 30 per cent, the radiation, 26.4. I used the figure of 30 per

cent as an arbitrary figure. Mr. Lewis in his report was approximately 30 per cent so I decided 30 per cent would be an arbitrary figure and would be close enough for any point of discussion.

The result I obtained was that the total cost of the Arlington to the Granada for furnishing the service was \$4,960 for the year 1935 and \$4,750 for the year 1936, which would run per month on the average of \$414 for 1935 and \$396 for 1936.

Mr. O'Brien then handed the witness City National's Exhibits 2 and 4 for identification.

The Witness: As a result of the study that I made in 1933, that I have testified to; I wrote a letter to Mr. Hall.

Whereupon, the witness produces the document marked for identification, City National's Exhibit 6.

Mr. O'Brien then showed to the witness the instrument marked City National's Exhibit 6 for identification.

The Witness: That is a letter which incorporated 709 my findings at that time. As to City National's Exhibit 5 for identification, I did not, as a result of my

own check-up and as a result of Mr. Lewis' corrected report, make any revision in my figures to correct the various estimates of expense items as made by Mr. Lewis.

Mr. O'Brien then referred the witness to two notations appearing on Exhibit 5, marked "Lewis Report of 1929" and "Lewis Report of 1934," and above those two entries appeared the corrections.

The Witness: In the second column above I gave the average cost. It says "average year." It is right under the "total" column. Under "electrical cost" is the total cost in the amount of \$7,400, from which should be deducted the average yearly cost of electricity to the Granada. In the Lewis' report of 1929, he estimated the pay-roll at \$5,520, and in his later report in 1934, he estimated the pay-roll at \$3,500. The actual pay-roll was \$2,450.

The Lewis' report of 1929, he estimated the electricity at \$6,477.60, and in his report of 1934 he estimated it at \$3,878. My finding as to the amount, as shown under the electricity column, \$3,300.

I have no dispute about the fuel oil cost, except Mr. Lewis' report in 1929 estimated the fuel oil cost at \$9,602 and in 1934, reduced the cost to \$7,000, and the actual was \$7,640.

The item under the column "Mechanical Repairs and Maintenance" is shown over the Lewis' report for 1929



as \$6,676.88, and for the year 1934 as \$6,647.80. I have 710 above that figure in the corrected column \$634, as I have just used the total cost of mechanical repairs and maintenance as in the audited figures. Mr. Lewis used a return of 15% on the total investment of the mechanical equipment to cover interest return on investment or amortization coupled with a figure for repair and maintenance. He used a 15% figure for 1929. In addition to that 15% he charged in a 20% profit. In preparing my cost sheet I omitted the profit item and I omitted the amortization and interest and took only the actual charges for repairs and maintenance, as indicated by the books. Figured that way, the total cost of furnishing the service to the Arlington was \$4,850. and adding 20% to that total, would make the figure approximately \$5,800.

Whereupon, Mr. O'Brien offered in evidence the report made by the witness in 1933, marked City National's Exhibit 6 for identification.

Whereupon, said document was received in evidence by the court and marked CITY NATIONAL'S EXHIBIT 6.

Mr. O'Brien thereupon offered in evidence the Lewis' reports of 1934 and 1929, which are marked City National's Exhibits 2, 3 and 4 for identification.

Whereupon, said documents were received in evidence and marked respectively CITY NATIONAL'S EXHIBITS 2, 3 and 4.

Whereupon, Mr. O'Brien offered in evidence City National's Exhibit 5.

Whereupon, said document was received in evidence marked CITY NATIONAL'S EXHIBIT 5.

The Witness: My age in 1933, at the time I first worked in this matter, was 35.

I am an engineer by profession. My school was the Carnegie Institute of Technology, Pittsburgh, Pennsylvania.

I have done other work, for the City National. I was with the American Appraisal Company for two years and three months. Following my receiving my degree at Carnegie Institute of Technology and from there I went into the actual construction with R. C. Wieboldt & Company. I was with the R. C. Wieboldt & Company until

1929, except for a period of two and one-half years in the construction field. You are intermittently employed by the contractors in field work. For a spell of two years I was with C. F. Noyes, National Realty Company in Chicago, who managed the United Cigar Stores properties, wherein I had considerable maintenance problems. Following R. C. Wieboldt & Company in 1929, I was with University of Chicago on special engineering problems, for a period of one year and three months, on temporary work. Then I was with the Board of Assessors before coming with the City National or rather the old Central Republic Trust in 1932. My work has been practical and theoretical.

As to the practical work which I have done at the University of Chicago I designed and supervised the remodeling work. I was in direct charge of drawing up the plans and specifications and handling of the construction, laying out of mechanical work on what was the old power plant, transforming that into a two-story shop building for the various trades. On the orthopedic hospital I supervised the laying out of the radiation and finishing up of the plans and specifications of the fifth floor of the orthopedic building at Billings Hospital. On the Ryerson Laboratory I supervised and laid out and had full charge of designing and revising all the electrical work in the Ryerson building to make that into a modern electrical plant comparable to the Jones Laboratory or rather Eckhart Hall, which adjoins it which specializes in the physical sciences; that work was not largely architectural.

I have been employed by the City National and its predecessors for five and one-half years, and I have not worked for any one else during that period.

I am not in a position to state that Mr. Hall had anything to do with the Arlington, because I was not called upon to find out who was operating the various buildings, except I was called upon to make the report and address it to Mr. Hall. Mr. Hubbard and Mr. Bickel told me to make it to Mr. Hall. I did not have any conversation with Mr. Leonard nor with Mr. Tuttle nor with Mr. Sturm.

The Court: "Let me ask Mr. Hall. What did you have to do with the Arlington?"

Mr. Hall: "I was its agent and I am still for the Arlington."

The Court: Were you getting \$50 a month there?

Mr. Hall: "No, not that much."

The Court: "How much were you getting?"

Mr. Hall: \$30, and similar to the arrangement that I have now. You see the buildings are right adjoining."

713 The Court: How much were you getting at the Granada?

Mr. Hall: \$50, that was considered expense money.

Mr. O'Brien: I might tell the court in 1933, the old owner corporation—

Mr. Hall: The Warren-Hart Apartments Building Corporation—

Mr. O'Brien: The Warren-Hart Apartments Building Corporation was running the Arlington and it was not until—

The Court: What is that? Tell that again.

Mr. O'Brien: I say, in 1933, the owner corporation was running the Arlington and our contact with that corporation was through Mr. Hall. In 1934 the Central Republic went into possession of the Arlington, so that in 1933 when these discussions were up Mr. Hall had some contact with it.

Mr. Hall: Well, in addition to that I was the nominal President of the Warren-Hart Apartments Building corporation.

Mr. O'Brien: That is right.

The Witness: At the time that report was made the City National paid my salary. I was not asked by the debtor Corporation to make any report. Mr. Hall did not pay me anything for making the report. I am not in a position to say that Central Republic Trust Company was at that time operating those properties, but I understand they were not. The Central Republic Trust  
714 came into the Arlington property about that time or a trifle before. It must have been the month of December, 1933. I don't know.

I had before me the Lewis report before I made my calculations. I did not have before me the figure showing what had been paid. I knew what the monthly charges were but I don't have the figure of the total charges paid. I took the audited figures. I took the audited figures with reference to fuel oil. I have no way of knowing how much oil was actually consumed in the operation except through the audited figures. They may have paid in one year a considerably larger sum than in another year on the basis of purchases. They had

two 8,000 gallon tanks there. My figures were not based on oil consumed but on oil purchased. The shrinkage in that oil in the tank was very slight. I do not know anything about what temperature the oil was purchased at.

I knew that there were three electrical meters in the Granada. I took the total audited figures of electricity. I did not make the calculations as to what part of that I thought the Arlington actually used in this heating and water and refrigerating operation, I deducted the estimated cost of light and power for the Granada from the total bills to the Granada. I did not get the actual figures from meters because you have too many relations in the metering in the three meters.

I took the consumption of all the light and power bills,—it was the equitable way of evaluating it. You have to calculate to get at your light from your total light, what is consumed for the building; also the separation of the power. They should charge the Granada with having 715 used whatever ratio the electricity works out in figures, if they used as much for their hotel operations outside of this heat and refrigeration and hot water matter or if they used as much as the Arlington and the Lincoln Park Manor did in proportion. I would rather figure it out that way than to take the actual figures which are shown on the meters of the Arlington if you could break down the total meter charges, but you couldn't because on your light you are lighting your downstairs space on your power; you have your elevator power, you have your power for your pump, you have your power for your ballroom, which comes into consideration on that main meter for your power, because you have got two or three items in the power which are not a part of these operations. I threw into my calculation a lot of other items, namely: the hall lighting and the general house lighting. You could break down the costs of those various services and they will come close into accord with the figures shown. I have used the audit figures made by Barrow, Wade, Guthrie & Company, both in 1933 and at the present time. I did not go back to any voucher to see what was in the items as shown in the audit. I did not examine any vouchers at all. I haven't seen the laundry motor in the Granada in operation. I haven't paid any attention to it. I have been in the laundry on one occasion. I don't know what percentage of the laundry work is done in the laundry. It



may be just a small laundry with one person working  
716 there. I spoke of the ventilating motor. I have not  
seen it in operation. I don't know whether it is  
used. I think that it should enter into this calculation.

I spoke of the motor on the pipe organ. I don't know  
whether it is hitched on the power, but the power list  
gives it as a power motor. The list of the motors that  
I have in my possession gives it as a power motor. I do  
not know whether it is hitched to the power circuit or  
the house circuit. I don't know about the ventilating  
motor whether that is on the house circuit or power  
circuit.

I don't know how the motor for the pipe organ is  
hitched up. I have not seen that motor in operation.  
I do not know whether it is ever used or not.

I said I had a present check made of the actual num-  
ber of feet made of radiation in the Arlington. That  
figure is 7,038 square feet of radiation. I don't know  
the figure that Mr. Schott used in his calculation. I  
figured it out to be 26.4% of the total radiation based  
on Mr. Lewis' report of 8,500 square feet of radiation.  
The 7,038 feet is the amount of radiation that is by  
actual check.

I didn't make a check to see if that was the normal  
amount that ought to be and for that number of rooms  
in the building. Another engineer made the check so I  
am not in a position to state. If you had an under  
supply it would take an over load of pipe lines to keep  
that building normally heated. Assuming the actual neces-  
sary percentage was around 30 to 35% you would have  
to carry an over load of all three hotels that wasn't  
necessary for the other two hotels.

717 In making up this report for December 23, 1933, I  
did not know that Mr. Hubbard had refused to pay  
the bills all during 1933 and that he had been paying  
600 instead of 940, as previously had been done. I was  
told why this report was desired by Mr. Bickel and Mr.  
Hubbard. They said they wished the calculation in ref-  
erence to what the fair costs of heat, refrigeration and  
hot and cold water should be and how the charges should  
be made. They didn't tell me that they had refused to  
pay the bill and had reduced an actual payment to  
\$600 all through 1933. I understand that as a result  
of this letter they made a charge-off in January of  
1934 of \$4,080. I understand that it was for billing  
that had been done and put on the books in 1933. I

didn't know what the situation was in reference to control as to the properties. I don't know whether Mr. Hall was operating both of them under their direction. I was instructed to address the letter to Mr. Hall. I couldn't say right now whether—, from recollection, whether it was Mr. Bickel or whether it was Mr. Hubbard who instructed me to address it to Mr. Hall. I think it was Mr. Hubbard.

The notation on the letter "Trust No. 12002" is the trust number used at the bank. That was for our file purposes.

The letter of December 23, 1933 was based on the audit and based on past history. At the foot of page 3 of my letter I say that if any reduction is made then there will be trouble with the Lincoln Park Manor. They did not ask me to write a letter about the Lincoln Park Manor. I have no idea if they made any change about the Lincoln Park Manor. I don't know if the Lincoln Park Manor is still paying the same price right through to the present time.

718 Mr. Woods then called the attention of the witness to page 3 of the letter of December 23, 1933, as follows:

"(C) Arbitrary cost as reported by Mr. Hall along with estimated figures decided by general discussion;"

The general feeling of what the figures should be were based on audit figures. That was what the discussion was for.

*Redirect Examination by Mr. O'Brien.*

Mr. O'Brien then called the attention of the witness to City National's Exhibit 5.

The Witness: In arriving at the ultimate proper charge I use the figure 8,500 square feet, being the Lewis' figure of the square feet of radiation in the Arlington as against the finding of 7,038 square feet. The Granada gets from the Edison Company what is called "c" rates.

The minimum demand according to that rate is not less than \$50 per month.

Mr. O'Brien then requested City National's Exhibit 7 to be marked for identification.

Mr. O'Brien then showed the witness receipted bill of the Edison Company, marked City National's Exhibit 7 for identification.

The Witness: This is a bill for the Granada for the

period from April 5 to May 5, 1937. Under the demand charge is billed \$164, based upon the peak demand or 82 kilowatt demand at \$2 per month per kilowatt. Under 719 the "Energy Charge" there is 6,000 kilowatts charged at 2.6 cents, or \$156. There is 24,000 kilowatts in addition to the 6,000, charged at 1.1, giving a total of \$164. There are 3,412 kilowatts, charged at .9 cents, or \$30.71. If the Granada were not supplying the Arlington and Lincoln Park Manor, its power items would not be anything like 24,000 and \$3,412. It would not get the rate of 1.1 cent, and a .9 cent, except on a small portion probably on some of the 24,000 kilowatt hours. Accordingly the electric bill and the power bill of the Granada would be much higher at the rate which it itself could obtain. In arriving at my figures I did not give any credit to the Arlington on that account.

Whereupon, City National's Exhibit 7 was offered in evidence.

Whereupon, said document, marked CITY NATIONAL'S EXHIBIT 7, was received in evidence.

Witness excused.

IRVING E. BROOKE, called as a witness herein, having been first duly sworn, was examined and testified as follows:

*Direct Examination by Mr. O'Brien.*

The Witness: My name is Irving E. Brooke. I live in River Forest. I am a consulting engineer. I have practiced as a consulting engineer off and on since 1912 in Chicago. For the last, about 12 years, I have been running my own organization. Prior to that I was in partnership. Prior to that I had my own organization. The term "engineer" is one that is quite often misunderstood. The 720 consulting engineer's work usually embraces the design and supervision of construction of some particular class of work. In my case it happens to be power plants, boiler plants, the mechanical, electrical and sanitary equipment in connection with industrial plants, schools, office building, hotels,—various types of structures, and in addition to that, the investigation, survey and reports concerning the adequacy of equipment and methods of operation and costs of operation.

I graduated at the University of Nebraska in the class

of 1903. I took my engineering there. I am a past president of the Chicago Association of Consulting Engineers which is a body composed of the recognized consulting engineers in Chicago. I am a member of the American Society of Mechanical Engineers and American Institute of Civil Engineers.

As to any building in Chicago which I have surveyed along the lines I have mentioned, I refer to the DePaul University building, and some branches of the work in the Mather Tower. I would have to consult a list. I cannot remember many of these things. I have done considerable work outside of Chicago in the way of hotels. I was employed at one time, a good many years ago, by the Edison Company, designed some of the substations, checked power stations. I was with the Illinois Steel Company, Corn Products Manufacturing Company before I went into business for myself. I have not done any work for public utility commissions nor for the utilities themselves re-

721 cently. I made a very brief inspection of the heating and refrigerating plant in the Granada. I spent considerably more time in the Arlington examining the heating system and some of the refrigeration work that had been taken out when I visited there. I made an inspection and examination at the Arlington at the request of City National Bank and Trust Company for the purpose of a report here. My examination was a personal examination. I inspected the piping and the radiation. My assistant or associate made a very careful check of the square feet of radiation.

In the Arlington I found out there was 7,338 square feet of radiation. I heard Mr. Hertzman's testimony here. I would say from the cube of the building as to the amount of radiation being adequate or inadequate, that it was just a fair, reasonable job, neither an excess nor a deficiency. It is a correct fair amount of radiation.

The Arlington has its own piping system, which goes to the tunnel supplied with steam from the Granada from the boiler plant in the Granada. The improvement of the Arlington premises carried its own steam, pipes, water pipes and radiators. As to refrigeration equipment in the Arlington there are still many of the old boxes although some of them already have been replaced with newer refrigerating units. The Arlington had a piping system and brine coils in the individual boxes. I was informed those belonged to the Arlington.

I made an estimate to determine what it would cost the



Arlington to install its own brine system and to install its own heating plant. We made an estimate of a boiler 722 plant with fuel burning equipment with necessary pipe connections and stack and pipe covering and installation, etc.; that would be necessary to install a boiler plant in the building to serve that particular building. If I remember correctly, I think we figured on a Kewanee Portable Firebox type of burner, fitted with a structure of about 10,000 feet capacity. I think such a boiler would be adequate for the needs and requirements of that building.

Whereupon, witness produces document and Mr. O'Brien requests the document marked City National's Exhibit 8 for identification.

Mr. O'Brien then showed the instrument marked City National's Exhibit 8 for identification to the witness.

The Witness: That is the report which I made. It is the original and it bears my signature at the end of the type-writing. It is an addition to the letter of transmittal.

In a general way as far as the heating system is concerned I figured the cost of the labor and materials incident to the installation of the plant. Referring to my report here, I had an item of \$400 for engineering and 10% for contingencies amounting to \$702.

By "Engineering" and by "Contingencies" I mean that in order to put in a job of that kind there should be plans and specifications made and bids taken which is included in the engineering charge. Contingencies is just what it says. Unforeseen circumstances that arise in the installation of pipes, the remodeling or the cutting of holes in the building, or anything we cannot see.

I have also figured the operating expense and fixed charges incident to that installation and the operation 723 by the Arlington of its own plant. Under Item B and operating expense, Item A is the construction and installation cost of a heating system, and Item B the operating expense, and under that, the subheading B-1, interest 6%, depreciation 6%, insurance 1%, taxes 1½%, and I included a rental value of the space occupied by the boiler plant, which I considered to be very nominal, making a rough total 15% for fixed charges.

For operating charges fuel \$1,580; electric current \$80; ash removal \$75; repairs and maintenance \$200; labor and attendants \$300, making the total cost of operating \$3,393.50.

Those operating charges are predicated on our experience in operating cost in making investigations of the

operating costs of several hundred buildings; that is exactly what we have used here and it is what we would figure the normal cost of operation; that cost of operation might vary a little between different systems and it would vary with the degree of skill of the operator.

724. I mean by water supply system that in a building of this sort the city water pressure is insufficient to supply the upper water using fixtures so it is customary in a building of that type to put in either an overhead gravity tank or a compression tank or tanks in the basement. On this particular job we estimated a pneumatic supply system in the basement in tanks for both hot and cold water, water heaters and other equipment necessary to furnish a complete hot and cold water supply to the building. The fixed charges I figured on the basis of the same percentages as in the case of the heating system, making a total of 15%. In my judgment the construction cost of installing the complete hot and cold water system is \$3,245, and the total cost of annual operation is \$986.75.

Going back to the heating system, the annual operating cost, excluding what I call the fixed charges, is \$3,393.50.

As to the water supply system the operating charges are predicated in the same way as in the case of the heating system.

On page 3 there is a heading "refrigerating system." This system means a 10 h. p. motor and compressor and cooler and all necessary and proper equipment. The cost of such a system is \$3500. It relates to a brine system utilizing the pipes and other connections already in the Arlington property. I have calculated 15% of interest, depreciation, and other items shown as in the case of the heating and water systems and have figured my operating charges in the same way. The cost of operation, including the fixed charges, would be \$1025 per year. The costs of the materials and of installation is based on present prices.

The costs are considerably more than they were five years ago. They have increased during the last five years. They have not been at anytime during the last five years any more than they are today.

I calculate the total annual amount required on this basis to be spent by the Arlington for its own heating, refrigeration, water and hot water systems to be \$5,405.05.

Whereupon a recess was taken until two o'clock P. M. of the same day, September 27, 1937.

Met pursuant to recess, September 27, 1937, at two o'clock P. M.

IRVING E. BROOKE, a witness heretofore called, and having been heretofore duly sworn, resumed the stand and further testified as follows:

*Direct Examination (Resumed) by Mr. O'Brien.*

The Witness: I heard the testimony of Mr. Schott on behalf of the Federal Trustee. I don't believe I have seen his report which is in evidence.

Mr. O'Brien then stated to the witness that the report included the charge of 15% for interest and amortization and maintenance, the charges for the three items aggregating 15%, and in addition to that it included a charge of 20% for profit.

The Witness: From an engineering standpoint, after having charged a total of 15% for fixed charges, I would say that a profit on such a business of 20% would be excessive. The 15% included 6% interest returned on the investment, as I understand, and the 20% was over and above that.

I recall that there were also various items set forth as operating charges in addition to the 15% charge for interest, amortization and maintenance, which additional items were for maintenance and repairs. I would say that those items in the operation total and also included 726 within the 15% were included twice. Those were the items of maintenance and repair. The items to which I referred and included in Federal Trustee's Exhibit R is an item of \$600 appearing under refrigeration expense on the third page of the report, the item of \$600 appearing under the heading "expenses" on page four of the report, and the item of \$100 appearing under water house service expense on page five of the report.

Also under refrigeration expense the item for insurance and taxes of \$393.09 and a similar item in the same amount under the heating expense and the one of \$196.55 under water house service expense would also indicate a duplicate charge. If the Trustee's Exhibit R correctly charges in the operating detail all of the items of maintenance as shown by the books then the 15% mentioned at the bottom of the first page is for interest and amortization alone. The interest recommended in the report is 5%, which means that the amortization is at the rate of approximately 10% a year. From the standpoint of the Granada, there is not any hazard which I can see in the furnishing of this

service and maintenance of the heating and refrigeration plant which tends to justify the 20% profit charge. As a fair business transaction, there is no reason that I can think of why there should be any profit charge over and above a reasonable return on the money invested. I do not know of any basis for making the charge by custom or usage or otherwise.

"The Court: Why would anybody—suppose you and I had two buildings side by side and I proposed to you to put in a plant to take care of the two buildings. Why should you do that for a mere interest on your investment.

I might change my mind.

727 The Witness: Well, I would say that that would all depend. I am not trying to evade your question. I say that would all depend.

The Court: Do you think a profit—

The Witness: I think the courts in connection with the public utilities—

The Court: Why do you tell me there should not be a profit?

The Witness: Not a 20% profit.

The Court: Then what are you talking about? You said you didn't see any reason for any profit.

The Witness: I didn't mean that.

The Court: That is the testimony as I have understood it.

Mr. O'Brien: Will you complete your answer to the Court there? You were talking about utilities.

The Court: This isn't a utility. You have a house and I have a house. You are not a utility and I can buy it from a utility. This isn't a utility. No monopoly. Am I mistaken that this witness didn't tell me that there should be no profit?

Mr. O'Brien: I did not so understand it. I would be glad to have the reporter read that back. Suppose you read the last two or three questions and answers.

(The record as above recorded was read by the reporter.)

The Court: I inferred that he did not allow any profit.

The Witness: Certainly there should be some profit.

Mr. O'Brien: How much would it be?

728 The Witness: After proper capital expenditures and operating expenditures are taken care of—what I mean by capital expenditures, perhaps 6% on the investment, perhaps 2% or 3% above that.



The Court: Just take our case. You and I have buildings side by side. You are not a utility. You just have a building and I want you to furnish me refrigeration. Do you think you would put in a plant sufficient to take care of not only your building but my building if you would only make 2% or 3% a year out of it? I wouldn't. If you would, you are not as good a business man as I think you are.

The Witness: Well, I believe that is what has been done in many cases in establishing rates because there are—

The Court: We are not talking about utility rates. This is something else. In a utility you have to buy from them. They have a monopoly. You with your building situated beside me with my building, you haven't any monopoly. You just take a chance on my not changing my mind, or of some Trustee in possession going into possession changing his mind.

The Witness: Well, the profit should be within reasonable limits, proportionate to the risks involved. I don't think there is any question about that.

The Court: You think 2% or 3% would be ample, do you?

The Witness: Well, if all these other charges were provided for under an operating cost. What I mean is you set aside certain sums for maintenance and for repairs, interest, taxes and depreciation, that is all established as part of the expense.

729 The Court: Well 'established.' But I may change my mind. You have a plant twice as big as you need and you haven't any market for the product.

The Witness: Well, I don't know—

The Court: Well, as a matter of fact you are just crazy if you do it at all.

The Witness: I would say—

The Court: You are just crazy if you go into that, unless you have an iron clad contract with me.

The Witness: I would say that would depend on the nature of the contract in the first place.

Mr. O'Brien: Well, that was what you meant I suppose when you told the court it would depend on the original setup.

The Witness: Right.

Mr. O'Brien: Supposing the Granada had made this investment without such contract, do you think it would be—the Granada would be in as good a position to make as much

profit as in a case in which it had secured an agreement before it spent its money for the plant?

The Witness: I certainly do not. I think it would be a poor business venture on their part to establish a plant there to take care of a group of buildings without having had their understanding."

The Witness: I remember that there was some testimony about radiation being underset. My office checked the radiation at the Arlington. I found what I would consider a very uniform job. I did not find an underset or an overset, and I would say it was even.

"Mr. O'Brien: Now assuming it were underset and that the heat was being furnished by the Granada through a central plant. Would it be possible to step up the heat 730 for the Arlington so as to obtain to the conventional temperatures without stepping beyond that point in the Granada and Manor? I don't make this very plain.

The Witness: I get your question.

Mr. O'Brien: I don't understand the technicalities, but I mean can you regulate the pressure separately, can you send more pounds of pressure to the Arlington than you are sending to the Granada and Manor at one and the same time?

The Witness: No. That would make very little difference on the heat value,—that is the heating effect. The increase in pressure, steam pressure, would not materially increase the heating effect.

Mr. O'Brien: What do you mean by heating effect?

The Witness: Well, the heat given out by the radiators."

The Witness: We usually figure the number of gallons of water per person per day consumed on the average building of this type on the basis of rooms and apartments. On a building of this type I would estimate approximately 125 gallons per day per apartment. In my report, marked City National's Exhibit 8 for identification, I think I use the basis of approximately 125 gallons per apartment per day. That was when I was figuring the cost to the Arlington of providing its own service.

As I understand the records for the years 1935 and 1936, the costs to the Granada of electric light and power were considerably diminished by reason of the favorable "C" rate and the volume of kilowatts used. If the Arlington and Manor were operated separately as to refrigeration and heating, the Granada would probably pay a larger 731 rate for the electricity that it consumes for light and power. The increase would be due to the fact that

they would not have as much total electric consumption to get into what we call the lower bracket of the rate.

I heard Mr. Schott's testimony concerning the cost and economy of operating individual electric refrigerators and also his estimate of the probable cost of installation of those refrigerators and of a separate heating plant in the Arlington. I think I would only have one point perhaps to take issue with him and that would be, as I remember it, on the question of cost for current for individual electric refrigerators. I have forgotten exactly what his testimony was on that but I think perhaps a charge of \$1 to \$1.25 per month for those small refrigerators would be sufficient to cover the electric service.

With proper care and maintenance, I think the heating and refrigeration plants of the Granada can be used for fifteen years.

The Granada is burning oil. In relation to the cost of coal, these markets fluctuate a good deal. At the present time perhaps, conservatively, the cost of oil is fifteen to twenty percent more than coal. The Granada has been equipped to furnish service only through oil consumption. In my setup on the Arlington for its own heating plant I figured coal consumption and stoker.

Whereupon Mr. O'Brien offered in evidence City National's Exhibit 8 for identification, which is the witness' report.

Whereupon said document was received in evidence marked CITY NATIONAL'S EXHIBIT 8.

The Witness: I was in the Arlington and the Lincoln Park Manor buildings. I wouldn't say that neither of them has ever had and has not now any basement space that could be used for heating or a refrigeration system. There was a considerable space there. I saw space in which I could put a heating or a refrigerating system. The space required for two systems and a hot water system would probably total in area 30 x 30. I did not say that I saw a vacant space there in the basement of each of those hotels sufficiently large to take care of that. I said there could be space provided there. There would have to be some changes. It would not have to be dug out and there would not have to be a foundation there and you would not have to strengthen the walls. You would have to put a floor in. I allowed for such expenses as that in the figures I made.

It is item 13 as building charges. The amount is \$200. That is for the Arlington. I do not think the opening up of the basement there and putting in the necessary supports and having it ready to put in this plant would be such a big job. I also in my report have an item for contingencies of \$702. A contingency is something you cannot foresee. We cannot see exactly what is under the floor there, exactly what we would have to do in connection with the underground stuff, that is what the item is put in for. We would get material in and out of that place by making an opening in the side of the building.

“Mr. Woods: You said, I believe, that if it were true that the Arlington had relatively an underset of radiation that that would not make any difference with reference 733 to furnishing heat to the Granada and the Lincoln Park Manor, is that right?

The Witness: I believe that is correct, yes.

Mr. Woods: Please read the question.

(The record as above recorded was read by the reporter.”)

Mr. O'Brien: That question is rather ambiguous, if the Court please.

Mr. Woods: What do you say about that?

The Witness: Well, as I recall it I said that under—of course, it depends a great deal on what you mean. I am not trying to evade your question. As to underset it would depend on the extent of that. Within reasonable limits, no, I would say it wouldn't make much difference.

Mr. Woods: Well, if you have three rooms or three buildings and the heating equipment for one of them is relatively less for that building than the heating equipment in the other rooms or other buildings, isn't it a fact that the other two rooms or buildings are going to be very hot, and isn't it a fact that the people in those rooms are going to open the windows and let a lot of heat go out? Wouldn't you have a wastage?

The Witness: Well, I don't see how you could accomplish that by any reasonable change in operating pressure or steam supply.

Mr. Woods: I agree with you. You cannot. That is the answer.”

Mr. Woods thereupon handed the witness City National's Exhibit 7; which is a voucher showing charges and payment with reference to electric current furnished by the Commonwealth Edison Company.



734 The Witness: I did not say that if the Granada used less current they would pay more for it. I think my statement in that connection was an answer to a question and I think the bill of the Edison Company in itself is a picture of the fact in that connection—that as the quantity of electricity increases the rate is lowered and if there is less current used the rate for that current would be higher. If you had the thing divided into three or four groups you would not reach the lower brackets. You would be paying exactly the same for the other brackets according to your kilowatt hour consumption. There would be no change in the rate for the given amount of power. When Mr. Schott takes for his calculation not the higher brackets but the composite of all the brackets and the actual consumption, he gives a smaller charge than any of those other hotels would have by itself. That differentiates again into whether you are talking about a charge in dollars and cents or whether it is a rate. I don't know what he did.

When I said that oil right now is more expensive than coal, I meant for the total charge, considering installation and cost of plant, etc. If I started in today to go along and if the fuel costs stay right where they are now, I would be pretty positive that the coal was the cheaper. As to how much cheaper, that again would depend on the installation; the size of the installation and the equipment, etc. put in. We had a study of that kind here a short time ago where we put in a boiler plant that cost \$175,000, and we made a very careful and very thorough investigation in this connection of coal and oil and we put in coal. No. 5 oil or No. 6 oil costs about four and three quarters cents per gallon.

735 I did not know that the Granada had coal until about four or five years ago. As to whether or not I think that a coal plant can be operated at the present time cheaper than oil, unless you put in a stoker—naturally we would figure on putting in a stoker—it isn't a question of increasing your plant cost, you would have to put in a stoker, you have no choice in Chicago. The City ordinance requires that every boiler plant burning solid fuels with over 1200 feet of radiation have a stoker or other mechanical fuel burning equipment. We figured on a stoker in the plant for the Arlington. Compared with a hand-fired job, it might be considerably more expensive than oil because there is such a large element of human labor comes in which is done away with to a large extent in the installation of a mechanical stoker or mechanical equipment. It is more or

less automatic. I said that in my opinion the current in the brackets that the Arlington would have to pay for it to operate an electric refrigeration unit of the type I have in mind, I believe a four foot box, would be \$1.25 a month. I don't think there would be a great deal of difference in the actual usable space between those boxes and the present brine boxes. In the modern box the space is a little more useable, available, than in the older type of refrigerator. For example, in a modern electric refrigerator there is space provided for milk bottles, let us say, and stuff of that kind. I don't want to go into a lot of details, but those things are all worked out to accomplish the storing of food stuffs, bottled goods, milk, and so forth, in a comparatively small space. After all, it is a question of useable space not the total volume of a refrigerator.

Witness excused.

736 CHARLES S. TUTTLE, a witness heretofore called, and having been heretofore duly sworn, resumed the stand, was examined and testified as follows:

*Cross-Examination by Mr. Woods.*

My name is Charles S. Tuttle. I live at 306 North Harvey, Oak Park. I am a Trust Officer of City National Bank and Trust Company. I have been there since the bank was organized on October 5, 1932. I was manager in charge of the real estate loan department of the Central Trust Company of Illinois for some years and then was made a vice president of the company and continued in that position until the Central of Illinois joined with the Chicago Trust and I still continued as a vice president of the new bank known as the Central Republic Trust Company, and following that I was with the City National Bank and Trust Company.

I presume I first heard about this Granada financial situation soon after the two banks consolidated in 1931, I believe. I don't recall the dates. At that time I am not sure that I had anything to do with the Granada financial situation, except that soon after, without recalling dates, I became a member of the Committee. The Committee was organized, possibly, in 1933, I don't recall the date. About that time was when I first had anything official to do with this property.

This Committee, I presume, was formed as other Com-

mittees in the bank, I believe by themselves; the men themselves got together and organized a committee. I think I have been a member of the Committee since that date. I have little, if anything, to do with reference to getting this financial setup reorganized. Mr. Sturm is in charge of the reorganization work as such. We had meetings of the Committee since 1933, perhaps six or eight, or maybe more. The Secretary of the Committee is usually asked by Mr. Sturm to get the Committee together. There is no kind of an agenda or record that the Committee keeps. The discussions at those six meetings about this property have varied. I couldn't tell them in order, nor could I tell you the subject of any of them. One or two, I think, were in connection with the question of whether a broker who was talking about buying the bonds, if he were to offer a certain price, would we consider that price. We didn't get to the point of considering a price, though we were asked to consider a price, as I recall it, of 20. I don't recall when the Committee was asked to take 20 for the bonds. I am sure there were other suggestions discussed, but I cannot recall them. As far as laying any plans to get this property out of reorganization, as I have said, such plans are worked out by Mr. Sturm and the men under him. I personally have nothing to do with that.

I have a short file of my own on this matter. I think Mr. Sturm has a similar file.

At one of those meetings, we discussed with reference to taking the matter out of court if the Committee had enough bonds to go ahead. We couldn't go to court at the time. I assume you meant the starting of foreclosure proceedings or continuing the one that was already started.

I heard of the proceeding in this court about this property which went to the Supreme Court of the United States. I approved of that proceeding as far as it was brought to my attention. I was told afterwards that \$4000 was spent on that law suit. I didn't approve that payment, that payment didn't come to me for approval. I don't think I had anything to do with that.

738 I have been up to the hotel, perhaps two years ago, only once. At that time I thoroughly went over each of the two buildings under discussion. We were not considering reorganizing the buildings as a unit. We did not even consider that as it came to me. To my recollection the Committee never discussed reorganizing these three buildings as a unit.

"The Court: Do you know who determined the policy,

Mr. Tuttle, that your Trust Company would remain in possession of this building after the property was brought to this court in this case?

The Witness: I didn't hear that, your Honor.

The Court: Read that.

(The record as above recorded was read by the reporter.)

The Witness: I do not know who determined that.

The Court: Do you know who changed the mind of your company in respect to that proposition?

The Witness: I didn't know that its mind was changed, your Honor.

The Court: Well, it was, as expressed by your counsel—

The Witness: I still say that I don't—

The Court: (Continuing.) —and not until the Court informed your counsel that the Court was going to endeavor to take possession through its Trustee and that if the Court failed in taking possession through its Trustee it would vacate the order approving petition as properly filed—not until that was done did your counsel advise the Court that you had concluded not to remain in possession. Did you know that?

The Witness: No, sir.

739 The Court: Do you know of any officers of your company that did?

The Witness: No, sir.

The Court: Have you discussed that with any of them?

The Witness: No, sir.

The Court: Does that reflect the policy of your company?

The Witness: I have nothing to do with the policy of the company.

The Court: You have nothing to do with it?

The Witness: No, sir.

The Court: Go ahead."

The Witness: I don't know when I learned of this present litigation in this court for the reorganization of this property. I presume soon after it was started, although the dates I haven't at all. If you told me that the petition was filed on the 23rd of April and that the order directing the Trustee of this Court to take possession was on the 17th of May, I couldn't say what time along there that I first heard about it. I must have heard that the Court had directed a trustee to take possession of the property. I do not think there was a Committee meeting at that time. I don't recall whether I have attended a Committee meeting since that time. I don't know that there has been a peti-



tion filed here asking for expenses and fees of the Committee in this proceeding. I haven't discussed that with anybody.

Witness excused.

740 WILLIAM H. SCHOTT, a witness on behalf of the Court Trustee, recalled, resumed the stand, having been previously duly sworn and further testified as follows:

*Redirect Examination by Mr. Rosenstone.*

The Witness: I have had an opportunity to look over the report of Mr. Brooke, City National Exhibit 8.

I have checked the various items under the heading of operating expenses for water. The equipment outlined here in the specification seems to be in line with about what would be required, so that the cost in that department is somewhere around where it would be, that is the installation. Now on the operating items he has \$225 for water. I figured \$204 for that item. I estimated that that building would require 3,000,000 gallons of water.

On the electric current he estimated it would take 9000 kilowatts and I figure \$225 on that. He has figured on the current \$125.

Now, there is an item left out and that is the coal required to heat the water. That would take one hundred tons, which at a \$6 price would be \$600 a year.

Under repairs and maintenance we agree.

As to fixed charges we agree.

Now on labor to operate that plant along the lines we were talking about would take two men seven months in the year and one man the other five months. Those men will cost \$100 a month a piece so that on the labor the water department would be entitled to charge for one-half of the summer labor which would be \$50 a month, which would make a charge of \$250 for the five months.

741 That would make a summer operation cost of \$100 a month and splitting that \$50 to the water and \$50 to the refrigeration would make a labor item of \$250 for the entire year on the water, making a total of \$1865.75, including the fixed charge. Mr. Brooke did not include in his operating expense anything for fuel. I split the coal for the heat and hot water and part of that coal would be used in the hot season. The two would make the total for the year one

hundred tons. In either case, whether the heat is on or not, it is a charge to the water department being the amount of coal absorbed by the hot water system.

On Mr. Brooke's testimony that he figured 125 gallons per apartment per day, that would make the entire yearly consumption 3,600,000 gallons. I estimate that that can be operated with 3,000,000 gallons of water. The actual consumption at the Arlington, based on my figures, runs 2,970,000 gallons. They would use more water as an independent plant than operating as they are because of certain leakages in the boiler, so the 3,000,000 gallons a year there is a conservative allowance for what they would use.

As to the refrigeration system, Mr. Brooke has estimated \$3500 for a complete system and 10 h.p. motors or compressors. He probably has the price on that so that may be somewhere near correct. As to the operating expense, I agree with him on the gas and brine. On the power he figures at \$1652 there are 65,000 kilowatts as against \$200 for electric current.

As to water in the amount of \$175, I got the same as he has got. I assume the same on repairs and maintenance, and on the labor \$255 instead of his \$50.

742 I have arrived at the labor cost by taking one-half of the one man's expense during the summer months and arrived at a total of \$2702.

As to an explanation why I arrive at a much greater figure for electric current than Mr. Brooke has estimated, one has to figure an average of sixteen hours a day operation on the compressor. Your circulation is continuous and when you figure out the current required it will run into that k.w.

In the heating plant, taking installation of the plant, there he has apparently overlooked one item and that is any boiler capacity for his heating system. He has overlooked the excess capacity required for heating the water. They should have a 12,500 to a 13,000 foot boiler instead of a 10,120. That will increase the capacity of the stoker 150 pounds in capacity, so his boilers and stokers are too low. Then there should be a submerged type of heater in the boiler instead of a tank with coils in it. He has figured a submerged type in his boiler cost, but his boiler is too small and his stoker is too small. The other items are probably somewhere around right excepting as to the cost of changing the building for installation. On a check-up of that they might have found a space in there by simply putting in a pit. I did not examine the basement of the Arlington Building from that standpoint.

As to Mr. Brook's operating items, he figured out that it will take 300 tons of coal at \$6 which would be a fair price on the fuel, or \$1800 a year for fuel.

As to power required, he figures 8880 kilowatts at a cost of \$222.

For ash removal I accept the same as his, \$75.

743 As to maintenance the same.

As to labor \$1400, two men at \$100 each, seven months of the year. His figure for labor is \$200 as against my figure of \$300.

Fixed charges make the total \$4855.30.

In determining the labor cost for heating the hot and cold water and refrigeration, I would say that two men seven months and one man five months would be required there for a year. I have allocated a certain portion of this labor expense to each one of those services.

In regard to the fuel for heating in the amount of \$1800. I have not included in that item the fuel expense for the water supply. The \$1800 is the heating of the building and \$600 the heating of the water, so that my estimate is \$2400 all told for fuel.

The installation Mr. Brooke has reported on is based on coal for fuel and I am figuring on a coal that can be bought at \$5.75 to \$6 a ton. That will answer the work perfectly and will be the cheapest fuel to use.

I have made a total of the operating expenses on all three items for a year in the amount of \$9,323.05. The Arlington total bill, based upon corrected figures from my former report, would be \$9,751.09, not allowing for rental for the space. In determining the figures under their independent installation, I have put nothing in for a profit. I have, in determining the amount that I recommend that the Arlington should pay now, recommended that they pay a profit or pay a sum that would net a profit of 20% to the Granada, the 20% being based upon the operating items only. There is no profit on the depreciation,—that is a fixed charge.

744 I stated to you that I have rechecked my report which is in evidence, and wish to make a slight correction. In putting together my totals I got a part of the Granada totals over into some of the subdivision that should be charged direct to the Granada Hotel. In other words, the item appearing on the last page of my report which is \$251.24 should be \$530.52. Now that gives a credit to the heating department of \$287.98, a debit to the water department of \$10.33, and a credit of \$1.44 to the

refrigeration. The consolidated sums now are \$15671.87 instead of \$15540.93. That is the cost of their share of the expense. That is the Granada's total cost of refrigeration, heating and water service, plus house lighting and power. It is not for the buildings. That they absorb. It would increase their bill and cut down on the others. It decreases the Arlington costs from \$9,857.03 to \$9,756.09, and the Lincoln Park Manor cost is decreased from \$5,969.13 to \$5,898.13, making the grand total now \$31,321.10 instead of \$31,549.01.

Those are the only corrections except on the current rate to the Arlington, just a slight change in that end of it. The Arlington rate now over the year would be \$812.59 instead of \$821.42, and the Lincoln Park Manor would be \$491.51 instead of \$497.44.

There are three electric meters in the Granada. The house meter records the current used in the hall lighting system that is charged to the Granada. The hall lights run from the hall meter and the house lighting takes care of everything else in the way of lighting; all of the apartments and that is the electricity that is consumed by the guests in the hotel. There is no other current that goes through that meter that is used for any other purpose. The other meter is the one power meter that takes care of all the power requirements of the building, including the power that is used in furnishing the service for the other two hotels.

Of the total power record that was chargeable to the Granada, the passenger elevator service, the freight elevator service, the vacuum cleaner, the laundry and bath and the kitchenette fan system and the miscellaneous fans throughout the hotel—the passenger elevator is a matter of estimate and I arrived at that conclusion by figuring it carried a 20 h.p. motor and has a travel of 200 feet per minute, and a capacity of 2000 pounds per hour—I took the total number of rooms in the building which is 203, and I figured that there would be a round trip twice a day for each room which made 604 round trips a day, with an average of a third floor up and down of 60 feet, and I reduced that to car miles and where the average load will not run over three or four hundred pounds per trip, I used the total capacity required for the total load on the partial load so as not to favor the other parties and give them the benefit of the doubt, so that I would say that the hotel is absorbing more current in that direction than they would be entitled to as its fair amount.



Now the passenger elevator consumption is 10119 kilowatts and that at the current rate makes a total of \$176.30. I have charged that, in my computation to the Granada Hotel solely.

The next item the freight elevator has a  $7\frac{1}{2}$  h.p. motor and only travels 100 feet a minute and has the same capacity. I allowed for that on a basis of 12 hours a day, a 400 pound load 6 days a week and worked that out, and that will require 3353.4 kilowatts, and at the current rate a bill of \$53.65 a year. That was charged solely to the Granada.

746. Now the vacuum cleaning system based upon the hours operated and the connected h.p., etc., figures out 1611.36 k.w. and at the current rate a bill of \$25.78.

The laundry has got a 5 h.p. motor, and figuring five days of operation  $7\frac{1}{2}$  hours a day per week, or 7273.5 k.w. at the current rate \$116.37.

The circulating fans for the bath rooms and kitchenettes that run eighteen hours a day, 4,901.22 k.w., a bill of \$78.42. Then on the ball room fan and the organ and some of the miscellaneous spots very seldom used I allowed 5000 k.w. or a total of \$80, or making their power bill total \$530.52 instead of \$251.24, which I had originally.

In determining the charge for power to heating, refrigeration and the hot and cold water from these meter readings, I deducted all of the items chargeable against the Granada and segregated them as a whole. In the house pumping there is a 15 h.p. motor that delivers  $442\frac{1}{2}$  gallons in a minute and thirty-five seconds, and then it is off about nine minutes so that I figured out from that the k.w. per hour was 11.19, and taking the pumpage over the year figured at 552.76 hours at 11.19, a total of 6185.38 kilowatts, making the power at the current rate \$98.96. On the hot water system is a 3 h.p. motor in continuous operation. On the circulating system operating continuously, the current requirement there is 19,584.88 k.w., making a bill of \$313.35.

The vacuum cleaner has a connected motor of 2 h.p. of 1.492 k.w., operates 40 hours per week, and that makes a current consumption of 1611.36 k.w. and a bill of \$25.78.

The oil pump which operates 17 hours a day and uses 0.373 k.w. or 2312.6 k.w. per year has a bill of \$37. There is one oil burner that has got a connected load of  $1\frac{1}{2}$  747 horse or 1.199 k.w., operating 4080 hours annually, or 4565.5 k.w. with a bill of \$73.04. There is one oil

burner with a  $\frac{1}{2}$  horse power, or .373 k.w., operating 2040 hours per year, or 760.9 k.w., or a bill of \$12.17. The laundry five horse power, or 3.73 k.w., operating 1950 hours per year, 7273.5 k.w., or \$116.37. Passenger elevator 11019 k.w. \$176.30. Freight elevator 353.4 k.w., \$53.65. Bath room and kitchen fans  $\frac{1}{2}$  h.p., each, continuous operation, 4,901.22 k.w. or \$78.42. Allowance for air compressor, sewer pump, lobby and ball room fans, limited use as some of them do not run once in six months, 5000 k.w., or \$80. The two vacuum pumps have 2 h.p. and have one pump which operates two months out of the season. I mean one pump operating 2 months and one six months, both operating; total k.w. 5676, or \$91.81. That makes the totals, Granada 176,442; water department 25,770; heating department 13,315; refrigerating 241,813; total 457,340.

There is every reason in the world why The Arlington should pay a profit for the service that they have been getting from the Granada. I don't know of any business that can continue without a profit. With the fixed charges all taken care of it is customary to add, where you are working down to as close a b. is as this, a profit on the operating items to allow for things that may come up that you don't allow for and that is why I took the percentage of 20%. The 15% on the depreciated value of the property is an operating item. That is strictly a fixed charge item and nothing was allowed on that. The 20% is based solely on the operating items.

748 I made an inspection of the refrigerating system in the Granada Hotel. I didn't pay any attention to the piping system in the Arlington Hotel for the simple reason that I was trying to arrive at what was the cost to the Granada at the point where the generation took place. I am familiar, in a general way, with the boxes and the system in the Arlington Hotel. I know, in a general way, the character of the boxes that are used there.

If that system is properly taken care of, like a prudent man would take care of his own property, and properly maintained and repaired, I don't know of any reason why they could not get ten or fifteen years out of it yet, that is, based upon its present condition.

*Recross Examination by Mr. O'Brien.*

The Witness: If the Arlington could get service at anywhere near the same price as being furnished by the Granada, I would recommend that they pay more money to the Granada for service rather than build and service their own plant. Assuming that they could operate their own plant cheaper than what was requested by the Granada, based upon their engineer's setup there, they had better save their fixed investment and pay it out to the Granada as they are than to have the investment in there and be relieved of the operation, because in all those operations I generally find that there is a lot of items that they have got to pay the bill but they don't get it in the reports.

For the purpose of liquidation and sale of any one of the properties, I would say they would be in worse shape with their own plant. It would be easier to sell the building if it were dependent upon another for this service. It is all a question of the man buying it; his opinion; some people like to be independent and operate their own, and another man that will figure right down to the last notch, he will keep his money out of it and pay the bill, and when he gets all through he will pay his bill and he hasn't got any money tied up.

I think with prudent care the plant at the Granada may last another fifteen years, both the heating and refrigeration. As to the basis of depreciation which has been deducted for the last thirteen years, the trouble is that the whole thing has been a paper proposition. If they had actually made the deduction and set up a reserve to have taken care of it, they could have taken care of their entire plant out of those reserves and had it in just as good a condition as it was originally.

As to whether or not I think at the end of the fifteen years that the Granada is still entitled to deduct their 15% a year on a plant which at that time had already been depreciated by 100%, I would answer the day is coming around when it has got to be rebuilt. Assuming that it has to be rebuilt at the end of fifteen years, that would be in 1939. Supposing that they use the same plant that is there and it is good for fifteen years more, I still think the 15% deduction is justified.

Mr. O'Brien then showed the City National's Exhibit 4, which is the January, 1934 report of Mr. Lewis and

asked him to look at sheet 5 of that report and tell whether he is in substantial agreement with what Mr.

Lewis says there.

750 The Witness: I want to go back a little further than that. I want to know what this is trying to do; whether this is operated outside or inside; it looks like it is from an outside source. I don't think the basis of computation is correct. Referring to the heating. I do not agree with him in one direction. He is not allowing enough condensation for the connected layout as it is installed in the building. The 582 pounds per square foot per person based upon the requirements of the building would be O.K. The Arlington has got set 7,197 feet of radiation. Then allowing the usual 25% for the piping system or 1,798, would make a total of 8,995. Well, he is about right on that because that might require on the Arlington 8,846, which shows the building as 150 feet overset. Yes, his 8500 is all right on that. His basis of computation at 582 pounds will be all right based upon his having made an allowance for that.

The Arlington hasn't anybody employed in this kind of department. I don't know if they are employing anybody. I don't know what the new agreement is with the Janitors Union in respect of the number of men required in the operation on a building like the Arlington. I didn't take that into consideration, but the basis of the labor charge that I set down is the fact that two men will be required,—two for seven months of the year and one for five months of the year. I thought it would cost per man \$100 per month; or \$200 for seven months and \$100 for five months. The basis of that difference from Mr. O'Brien's report as to the labor charge arises as I have just stated. The labor on the refrigeration and the  
751 heating is not all in the one item. I take in the entire charge of labor and heating; that is of the heating season. The other five months, I split between the water and the refrigeration. As far as that one item is concerned the difference in my figures on each of those items comes about in that way.

I am assuming that Mr. Brooke has a submerged type of heater in there. I don't know whether Mr. Brooke bases his figures in part upon actual bids received from contractors. The difference on the cost there would simply be the increased capacity. That is all I figured.

As to whether or not I still think the four-foot individual



unit electric box would consume \$2 a month electricity, I checked one up that cost him \$4.65. I think it would cost at least \$2.

Witness excused.

Whereupon an adjournment was taken until Tuesday, October 5, 1937 at the hour of ten o'clock A. M.

Met pursuant to adjournment October 5, 1937 at ten o'clock A. M.

Whereupon a recess herein was taken until the hour of two o'clock P. M. of the same day, October 5, 1937.

752 Met pursuant to adjournment on October 5, 1937, before the Honorable John P. Barnes.

Present:

Mr. Woods.

Mr. Rosenstone.

Mr. O'Brien.

Thereupon W. E. TOON was called to the stand and cross-examined by Mr. Woods: .

My name is W. E. Toon. I live at Oak Park, Illinois, and am Assistant Trust Officer of the petitioner, City National Bank and Trust Company. I have been connected with that bank since its organization October 5, 1932. At the present time I am attached to the Corporate Trust Division of the Trust Department and have under my control the operation of certain of our Corporate Trust accounts.

(The witness produces original ledger sheets showing the accounts with the Granada Estate as they were in May, 1937, and as they were at the date of hearing. The cards so produced were marked Court Trustee's Exhibits T and T-1 to T-10 for identification.

(Witness resuming.) Trustee's Exhibits T to T-10, inclusive, are all of the cards in all the ledgers representing accounts between City National Bank and Trust Company and the debtor, Granada Estate, which were active in May, 1937, or at any time since with the exception of the general bank account in the banking department. There is a separate ledger sheet for that.

The witness at the request of Mr. Woods produced four additional sheets which were marked Court Trustee's Exhibits 7-11 to 14, inclusive, showing the commercial ac-  
753 count with Granada Estate carried with the City National Bank and Trust Company. Cards marked Ex-

hibits T to T-14, inclusive, represent all of the financial matters between Granada Trust Estate and City National Bank and Trust Company, either individually or as Trustee:

Photostatic copies of the cards marked Court Trustee's Exhibits T to 14, inclusive, were offered and received in evidence under those respective numbers. Court Trustee's Exhibit T is a ledger record maintained in our coupon department evidencing a balance of cash on hand of \$4.78 which is the residue of the balance turned over to us on January 10, 1935, as Successor Trustee from Central Republic Trust Company. We still have that balance.

Court Trustee's Exhibit T-1 is a ledger record maintained in our coupon department and covers a present balance in our hands of \$27.70 representing the residue of a payment of 2% income tax. We had that balance on May 17 of this year and still have it.

Court Trustee's Exhibit T-2 is a record maintained in our coupon department and evidences a cash balance of \$36.00 for the payment of unrepresented past due interest coupons. We have had that money since January, 1935, and still have it.

The balance of \$82.10, shown on the back of Court Trustee's Exhibit T-8 is the balance of our account designated Trustee in Possession Account.

754 Court Trustee's Exhibit T-9 is an account designated Reserve for Government Tax, Unemployment Compensation Fund and shows a present balance of \$182.66; payable to the Government. On May 17, 1937, that balance was \$120.63. On May 20 there was a credit of \$39.84 covering 2% of the payroll for the month of April, 1937. On August 2 an additional credit of \$22.19, covering 2% of the total payroll for the month of May, 1937, was added. The balance shown has not been paid to the Government because it is payable annually.

The Court Trustee's Exhibit T-10 is an account designated Decree Distribution Account and shows a present balance of \$1,507.76. We have had that money since May 17, 1937.

Those accounts are not necessarily demand accounts. A demand account, as I understand it, is one that may be demanded immediately and paid over. That Government account for instance is an account for the collection of tax for the United States Government that must be paid at a specific time. I don't know anyone else that can demand it except the Government.

"Q. You think that Government account is one that you could not pay over to the court here and have the court pay the tax?

"A. I think that we are charged with paying that money over to the Government.

"Q. You think the Trustee of this court is not charged?

"A. That I do not know.

755 The witness continuing: If it happens to the law that the Court Trustee is charged with the payment of that money we would seek advice of counsel. If counsel advises us to pay it over, we will pay it over. We have not yet paid it over to the Government or to the court. If it were the law that that money had to be paid before the end of the following month we would be in default in payment. Moneys represented by these various accounts could not be paid over to the court on the 18th of May because they were especially designated in certain cases as to the purpose of the funds deposited. The Government tax account is one. The Decree Distribution Account is moneys that were applied under the decree of the State Court. We have not yet applied the moneys under the decree but are holding them in a separate fund designated for that purpose. Money put in the Decree Distribution Account was put there on October 29, 1936, two months before the Decree was entered. We had made out report to the court as to the balance we had on hand and it was our practice in making such report to the court to deposit those funds in a Decree Distribution Account in order that the funds might not be disbursed until the decree is entered and the court orders its distribution.

"Q. The decree was entered in December; you have not yet taken the money out and applied it in any way, have you?

"Mr. O'Brien: Just a minute. I object to that, your Honor. That calls for the legal conclusion of the  
756 witness as to the event of that whole transaction.

"I think it is perfectly plain that when the money is set aside, taken out of the trustee-in-possession funds and put over in that decree distribution account, under the practice that the witness has testified to as to what the purpose of it is and when that is followed by decree, of which counsel has a copy, showing that the court offset that balance on hand against indebtedness due the Trustee, I think it is very plain that that is not the money of the debtor.

"Mr. Woods: Well, your Honor, we will show here that that decree is utterly void, for a great many reasons, when we get into the legal argument.

"I am asking him the fact, whether he did take the money out of this account and apply it in any manner, as though that decree authorized him to do it.

Witness resuming: We did apply it in reserve against the order of the court by setting up a decree distribution account, the funds to be applied pursuant to any decree that might be entered. The money is still in our possession. Court Trustee's Exhibit T-10 is the only account we have with reference to that money.

Referring to the last item on the front side of the Court Trustee's Exhibit T-7 I don't know that there is an erasure there. The entry there now purports to have been made May 25. I don't know when it was made. 757 I did not make it myself and don't know who did. I did not direct that it be changed.

Those moneys were kept in various accounts because it is not our practice to keep only one account. We must ear mark various accounts for various purposes in the operation of our trusts. We sometimes find it more simple to have ten accounts than one.

The money is used for the particular purposes for which it is set up in the accounts. We transferred money from one account to another, depending upon the circumstances that might call for transfer. We took \$15 out of Court Trustee's Exhibit T-1 and put it over in T-2. In other words, we took it out of the residue of the 2% tax account to provide for the payment of a coupon due March, 1930. In Court Trustee's Exhibit T-7 we transferred on May 25 of this year \$500 from the trustee-in-possession account to the commercial account. The decree distribution account, T-10, was a transfer in the beginning from the trustee-in-possession account. Money could be transferred from one account to another, if those transfers were made for the purpose of setting up particular funds for particular purposes; the occasion might not arise where you would be called upon to transfer to any account. I don't believe the money all belonged to one trust. I think that the reserve for payment of the Federal Government tax on returns made is the property of the Government. I think we must hold that decree distribution account. We have a balance there that has been applied by the State Court.



758 Referring to Court Trustee's Exhibit T-10 there is set up a decree distribution account and the decree in the State Court finds this particular balance of \$1,608.56 as applicable on account of certain prior liens.

The moneys represented in these various accounts came out of the net income from the Granada Hotel property.

I don't remember when I first learned that the Federal Court had ordered money and property of the Granada Estate turned over. I don't know that anybody told me. That property was handled in our property management department and in our reorganization department and I may have secured the information by someone telling me or by seeing a copy of the order. I don't remember. I didn't do anything about that order as it was handled through our property management department, of which Mr. Bickel is in charge.

*Examination by Mr. O'Brien.*

I am willing to pay over, if the court so directs, the \$36.00 covering September 1, 1931, maturity of interest coupons.

\$27.68 excess tax account, and

\$4.68 on deposit in the accrued interest account at the bottom of page 1 in my report and account. The method of handling accounts on the books in the case of Granada property is no different than any other trust carried in the bank.

759 The funds in the coupon account are held for the benefit of holders of unrepresented coupons. Had the holders of those coupons presented them to the bank up until the time that the trustee in bankruptcy was appointed, they would have been paid.

JOHN J. BICKEL, JR., witness heretofore called, resumed the stand and was further cross-examined by Mr. Woods:

Referring to Court Trustee's Exhibits T-3 and T-4 I cannot tell you why a sum in excess of \$10,000 was carried in the trustee-in-possession account for a period of about fourteen months. I knew at that time that there were large sums of taxes unpaid. I had nothing personally to do with the item of March 19, 1935, showing payment to attorneys under a Skarda proceeding. I presume that the person in charge of the payment of taxes

out of these accounts or an item of that kind would be Mr. Sturm. My responsibility ceases with obtaining the income and turning it over. My job is to operate the properties. I had nothing to do with spending any of the money in the account.

The money shown to have been received by Court Trustee's Exhibits 11 and 14 came from the rents of the property. That fact is not shown by these sheets. This is a commercial account. I believe I have previously testified as to the balance of \$200.20 shown by the final sheet. The City National Bank is a bank of deposit. When a customer comes to the counter and asks for his money, we pay it if he has the money there. As I have previously testified you have a check in your possession for \$188.00 which reduces the balance of the account which we have filed to approximately \$12.00.

I know that that check was drawn payable to the order of City National Bank and Trust Company for management fees up to May 17. Whether you refused to permit that check to be paid or not I know we have not received the same yet. Mr. Hubbard informed me that he submitted the income statement to you and that check was based on the income.

"Q. You don't know, then, that when that check was drawn neither the item nor the check was submitted to me?

"A. I think the figures were; Mr. Hubbard informed me they were."

I know something about the item of \$4,080.00 on the books of the Granada at the hotel which was charged off at the end of 1933. I don't recall that that was done at my direction. I think it was done at the direction of the corporation, which at that time was subject to Edward Hall's direction. That is the same Edward Hall who appears as agent in numerous places in Court Trustee's Exhibits 5 to 10, inclusive. At the time the bank took possession of the Granada he was retained as agent for the Trustee and was paid, I believe, \$50.00 a month for supervision and assistance to the Trustee.

He supervised with Mr. Hubbard the affairs and operation of the house, visited the property, determined renting policies, supervised the maintenance, together with Mr.

Hubbard, was present with the manager frequently and saw that the personnel functioned efficiently and satisfactorily. In other words, all the duties that the operator of a property had were assumed by Mr.

Hall along with the Trustee. After the hotel manager, Mr. Parker, Mr. Hubbard and Mr. Hall, performed their duties there wasn't a great deal for me to do in relation to that one specific property. We have a lot of properties in the bank that I do not pretend to operate or be closely familiar with any one, being head of the department having as many buildings as we do. When questions of policy or other questions come up Mr. Hall and Mr. Hubbard would consult me and we would try to arrive at a logical solution for every problem that came up.

Thereupon Court Trustee, Mr. Woods, offered and there was received in evidence COURT TRUSTEE'S EXHIBIT U which is a contract with reference to services between the Granada Hotel and Arlington Hotel over the objection of Mr. O'Brien that the contract which was dated October 1, 1927, was made with Frank E. Barton, who at that time was the owner and operator of the Arlington Hotel and not with the Arlington Building Corporation, or with the Warren-Hart Apartments Inc., its successor or grantee, and on the further ground that there was no showing that Mr. Barton was the owner or that the contract was ever in use either by assumption of right or otherwise, as far as Warren-Hart Apartments Inc. is concerned.

At this point there was also offered and received in evidence as the COURT TRUSTEE'S EXHIBIT V, a prospectus which was issued by the Chicago Trust Company with relation to the Granada issue of 1924 over the objection of Mr. O'Brien that the prospectus, which was issued by the Chicago Trust Company, was in no way binding upon the City National Bank and Trust Company.

Thereupon a check for \$13,000, dated August 23, 1933, drawn on City National Bank and Trust Company to the order of Chicago Title and Trust Company and the voucher on which it was issued was received in evidence as COURT TRUSTEE'S EXHIBIT W over the objection of Mr. O'Brien that it was inadmissible because City National was appointed Successor Trustee and went into possession of the property in January, 1935.

Thereupon there was marked for identification as Court Trustee's Exhibits X-1 to X-10 respectively certain pages of the printed transcript of record in Cause No. 4228, United States Circuit Court of Appeals entitled "Winstrand vs. Albert Pick & Company" consisting of an order by Judge Wilkerson granting a temporary restrain-

ing order against Master in Chancery Max A. Korshak and Pick & Company, and ordering a \$2,000 bond as security for costs so filed, injunction bond in the sum of \$5,000, the order of Judge Wilkerson approving said bond, the order of Judge Wilkerson requiring additional injunction bond in the sum of \$20,000 and his order approving said bond, decree of Judge Wilkerson vacating the injunction and dismissing the suit, the appeal and supersedeas bond in the sum of \$40,000, signed by Elof

Wenstrand and the Indemnity Insurance Company 763 of North America, the suggestion of damages filed by the successor to Albert Pick & Company in District Court Case No. 8817 after denial of certiorari to the United States Supreme Court, injunction writ, answer filed by Elof Wenstrand, answer filed by Indemnity Insurance Company of North America, the transcript of testimony which was taken before a Master with reference to damages on said bonds, the motion slip dated September 11, 1933, showing that the suggestion of damages was compromised, settled and dismissed by the District Court. The Exhibits so marked were received in evidence as this COURT TRUSTEE'S EXHIBITS X-1 to X-10, respectively, over the objection of Mr. O'Brien that they are immaterial to any question presented before the court in the present hearing as they go to the propriety of the disbursements made on account of the receiver's certificate issued in the State Court proceeding.

PHILIP R. CLARKE, was called as a witness and being cross-examined by Mr. Woods, Court Trustee, testified as follows:

My home is in Hinsdale and I am the President of the City National Bank and Trust Company. I recall coming to your office about the 27th day of August. I don't recall at that time that you asked that certain moneys be paid over to the court. I do recall that you were very anxious to see Mr. Leonard. I don't recall that you showed me the order of court with reference to turning over certain moneys. I won't dispute 764 that you did, but I don't recall it. Court Trustee's Exhibit B does not refresh my recollection on that matter. I don't recall that I asked Mr. Bickel what the occasion was of Judge Barnes ordering this bank to turn over any money. I recall that Mr. Bickel gave me a



general explanation of the occasion. I don't remember what he said. I have not made any inquiry since that time to see whether Judge Barnes' order was obeyed. I have merely made inquiry from Mr. Leonard as to whether he was giving his personal attention to this matter and he assured me that he was. I made sure that Mr. Leonard was attending to it and as a responsible head of the bank, gave no further concern to it after that but left the whole matter to Mr. Leonard. Matters of that kind are seldom brought before the Board of Directors and was not in this case. Nothing pertaining to the Granada matter has ever been before the Board of Directors that I recollect. I have heard that a previous case dealing with Granada was carried to the Supreme Court of the United States by the Committee who were officers of my bank. I didn't see any of the papers pertaining to that case. It was not brought before the Board of Directors to my recollection.

I didn't have anything to do with the organization of the Bondholders' Committee for the Granada. I do not know why it was organized in our bank. I don't know specifically how our bank got this trust business. I have probably seen the name Granada but the matter never came specifically to my attention until you mentioned it the morning you came to my office. I am not able to see why the money in question was not paid over to the Federal Court. The only procedure I have for knowing that a trust remains on our books for a considerable number of years without disposition is that I have general conferences frequently with Mr. Leonard. I would not know anything about it unless he came and told me. I am sure that I would be informed by Mr. Leonard if he felt that we were guilty of any particular dereliction in the matter of the administration of any trust. He is the head of our trust department.

By merely looking at the item of \$1,507.76 at the end of the foreclosure decree distribution fund and at the item of \$83.10 at the foot of the trustee-in-possession account and the item of \$11.65 at the foot of the general account, which are the items at the end of the last three columns on the last sheet of Court Trustee's Exhibit B indicating the balance on May 17, 1937, I am not able to form any conclusions as to why those moneys were not paid over to the court. I have already said that I heard nothing of this case until you came in my office and know nothing whatever about it.

ARTHUR T. LEONARD, having been duly sworn resumed the stand and was cross-examined by Mr. Woods, as follows:

I testified a few days ago in this case. I learned about this reorganization proceeding within a few days after it was filed on April 19, 1937. I was consulted and told that there had been an involuntary proceeding 766 started in Danville and that a later voluntary one had been instituted here and that in all likelihood the reorganization could now proceed. I believe that I was told that before the Trustee was appointed on the 17th day of May. The matter came to my attention before Court Trustee's Exhibit I, which is a pleading filed in behalf of City National Bank and Trust Company in this case, was filed on May 17, 1937. I had nothing to do with the filing of that pleading. I presume it was Mr. Helffrich, Mr. Toon or someone in the corporate trust division who directed its filing. I knew that there was a hearing on the appointment of a trustee in this case but I didn't know it was on May 15. I don't know the date. I knew about that hearing before it was held in court. I discussed the policy to be adopted at that hearing, which was that we were to endeavor to have the court to permit us to remain in possession of the property so as to maintain continuity of management. I later heard that the court did not feel that way and had indicated that if that point was pressed the petition would be dismissed and we, therefore, withdrew from our position. I discussed that matter with Mr. O'Brien and, as I recollect, with Mr. Sturm and Mr. Bickel, very shortly before the order appointing the trustee was entered, assuming that order was entered on May 17, which was a Monday. I could not say definitely whether the conference was on the previous Saturday or not. The conference took place in my office and my directions were 767 that we would withdraw any objections to the appointment of a trustee. I have not before seen the petition filed May 17 in the Clerk's office, which you say sets forth that the court had no jurisdiction and could not take possession away from the City National Bank. (Witness reads the document.) I don't believe this denies that the court has jurisdiction. It merely reserves the right to object to it, but I don't believe it in effect challenges it. I don't recall whether it was before or

after that document was filed that I decided that we would turn over possession of the hotel property. I gave instructions with reference to it to Mr. Bickel and Mr. O'Brien. I didn't go into detail with them as to whether those instructions included anything besides the hotel management itself. I didn't discuss the turn-over of documents or money. I assumed they would take care of all of that. That was part of their work. As I recall it, Mr. Bickel reported to me some conversations that he or Mr. Hubbard had with you in reference to documents and money which the court trustee wanted. That conversation was to the effect that there were certain bills outstanding against property which they wished to pay while you wanted them to turn over all the cash without some of these bills being paid, and that certain bills had been agreed upon that could be paid and you were demanding that the balance of them be paid, although we had no further funds in our possession with which to pay them. It was Mr. Bickel that said that we had no further funds. I did not send for the ledger cards but assumed that he knew exactly what the state of the account was. I have investigated the entire

768 matter. I have not examined the ledger cards. I have seen the audit which you presented and I have satisfied myself that they were correct. The audit was Court Trustee's Exhibit B. I first saw it when you presented it to me at my office. I would not be sure of the date as being July 28. I presume you know the date. That was the first time you saw me. You came to my office with Mr. O'Brien. I believe that at that time we discussed all of these matters. The matter which is shown by that audit and, in general, all the items which are in litigation now on the bank's petition. You furnished me at that time a written memorandum showing the various things that you intended to object to with reference to the account of City National Bank and Trust Company. At that time you asked me to correct all of these matters and I told you that I would try to give you an explanation of all of them and all of the information you wished. You told me at that time that the house fund of \$400 had been taken away from the hotel after your appointment without your knowledge or consent.

You said that these items which are shown at the foot of this account, Exhibit B, were moneys which belonged to the estate, and must be paid over to the trustee, although at that time I was not familiar with the char-

acter of the items and subsequently upon investigation I disagreed with you and still do. At that time you spoke of Judge Barnes' order. I didn't on that date, nor had I previously, looked at the order. In these discussions with Mr. Bickel and Mr. O'Brien I did not ask for the order of Judges Barnes. When we had this discussion 769 there on July 28 with you, Mr. O'Brien and myself, I said that I thought we had handled this matter in a confused way and that we should have done it in one way or the other. Either turned over all the money and all the bills or the reverse. I believe the next day I received a letter from you. I don't recall that your letter was not answered. I do not recall writing any answer to it. I generally don't handle correspondence in matters of this sort.

You came to my office again on the 27th day of August about these matters. That is the day you saw Mr. Clarke. On that date you showed me this document of Court Trustee's Exhibit B and read to me and Mr. Bickel the order of court with reference to the turn-over. Then and now I do not believe that the order controls these moneys and as we have said then and now, if we have an order from the court to turn over these moneys, we would do so, but in our opinion they were not the property of the debtor and were not covered by the order. I did not hear the testimony of the gentleman yesterday that all of these moneys came out of the operation of the property. The moneys that you referred to at the meeting in our office was not in our hands as trustee-in-possession. They had been turned-over in the decree in the foreclosure proceeding to the trustee under the Trust Deed, which happens to be the same institution. It was taken out of our account as trustee-in-possession and was paid in a separate account to be applied on the debt. It was no longer in our possession or part of 770 the funds in our hands. This order refers to the funds in the hands of the trustee-in-possession. This audit of court trustee's Exhibit B was intended to be a full disclosure of all of the facts and all figures. There is no attempt to hide this money that we are discussing. I don't know why it took until August 25 to find the facts that are shown in that audit. They were always available.

The Trustee was told all summer long that we had no funds because it was the fact. We had no funds at all as trustee in possession. It is my contention now,



in the face of that order, that we have no funds as trustee in possession. I don't recall what my explanation was on August 27 when I talked to you and Mr. Bickel. I do not think there has been any change of attitude on our part right from the start when I first heard about it. We have been advised by counsel and that is where we stand. I told you at that time that we refused to turn over the money because of advice of counsel. We have never failed to obey an order of court and I don't believe we ever shall. We have not in this case in my opinion and in the opinion of counsel.

We have further stated that if the Court would expand the order to cover these funds, or enter an additional order we would immediately comply with it, but that in our opinion and in the opinion of counsel, this order does not cover these funds. I don't know to my personal knowledge but I presume, that our counsel was in court when this order was entered. I don't believe that any effort has been made to have that order modified since

May 17. We have not asked an appeal from that order 771 at any time because, as I said before, in our opinion and in the opinion of counsel this order does not cover that money.

My idea is that the court has general jurisdiction in this case and has authority to direct the trustee in possession to turn over any and all funds in its hands as long as it covers the property of the debtor. If it is not the property of the debtor then it is not covered by a general turn-over order. My idea is not that all anybody has to do is to say that the money belongs to John Jones and the court is powerless to direct that it be turned over. As I stated before my idea is that the court has complete jurisdiction over the property of the debtor. It is not my idea that we have a claim on some of these moneys. My idea is that this money does not belong to us, it does not belong to the debtor here—it is not in the court at all. We don't claim to own that money as a bank. The bank has no claim on it itself. It is in the hands of the bank as trustee under the mortgage.

I do not personally own any Granada bonds nor certificates of deposit. The City National Bank and Trust Company does not own any such bonds or certificates nor, so far as I know, do any of its officers. I have not heard of any trusts or contracts by which City National Bank and Trust Company or any of its officers have any interest in such bonds or certificates.

*772 Redirect Examination of Mr. Leonard by Mr. O'Brien*

I recall of your advising me of the filing of the involuntary petition at Danville against the Granada Apartments and of your subsequently informing me of the filing of the involuntary petition here, which were later consolidated for hearing and proof by Judge Barnes. I recall that you asked me what the position of the bank and the committee was in respect to the question as to conflicting of jurisdiction between the two courts and whether the proceeding should be here or at Danville. I instructed you that we certainly would not oppose either of the jurisdictions but would keep a neutral position as between the two jurisdictions. You told me that both of the proceedings were good and that a reorganization could be effected in them. I recall advising you prior to the first hearing before Judge Barnes that neither the Committee nor the bank, as trustee, would oppose the court's jurisdiction to approve these petitions. I read the transcript of the proceedings which took place when the matter first came up here. After the hearing on that day, the first time the matter was on here before Judge Barnes for the approval of petitions, you requested a meeting at the bank and we had such a meeting. Mr. Helffrich, Mr. Sturm, Mr. Tuttle, yourself and I think Mr. Bickel was there. You said that the court had indicated his intention of dismissing these petitions if we stood upon the petition which the trustee had filed to retain possession.

773 session. We both agreed that we would not stand on it. The counsel were instructed to so inform Judge Barnes. I do not know whether they saw Judge Barnes, but I assume they did. I don't know the date that the bond of the trustee in bankruptcy was filed and approved.

In our report and account filed in this proceeding we offered to make such distribution of funds as the court might direct. So far as I know there has never been an order to file a report and account. It was brought in voluntarily. In that first conference which we had with you and Mr. Woods in July of 1937 we told Mr. Woods you were going to present a report. I don't recall that Mr. Woods indicated that we should settle the items in reference to the heating business, the lobby space and what not. As I remember it, these various items that he brought up were new to me and I said that we would go into them and give him all the information that we could and try to facilitate his arriving at his own conclusion that there was no impropriety there. I remember telling him that I did not

see that the bank had done anything improper in the matter and that it would bring its account to court so that these matters might be then considered.

As to these unpaid bills I recall that you told me that you intended to present a petition to Judge Barnes and that Judge Barnes orally indicated in open court that you take that matter up with the trustee and be paid such bills as he might check and O. K.

As I recall it, the letter that the trustee wrote me 774 following the conference in July was merely confirmatory of the things orally discussed in that conference. We have definitely answered the trustee orally in that conference. I told him that I disagreed with him on the position of these items and that the matter would have to be covered when our report came in. I don't believe I had any further answer to make on receipt of this letter.

As trustee under the indenture the City National Bank may hold property for the benefit of any number of people. It may be coupon money, or tax money, or money to be applied on the debt. It has been my position that City National is unwilling to abdicate as trustee and to dispose of the trust property, the mortgage security, until the lien of that mortgage is discharged in some way in this proceeding. There are certain papers which we claim the right to keep until that time. That is the mortgage policy, the original trust deed, the certificate of survey and various other papers.

WEIGHTSTILL WOODS, Court Trustee, appeared as witness in his own behalf:

*Direct Examination by Mr. Rosenstone.*

I am a lawyer with offices at 77 West Washington Street, Chicago, Illinois. I was appointed trustee by an order in this cause on May 17, 1937. My bond was approved May 20, 1937, and I have acted as trustee since then. As soon as my bond was approved in order to enforce the order of May 17 with respect to the collection of funds and assets and other property held by the City National Bank and 775 Trust Company I notified City National Bank and Trust Company, talked to Mr. Bickel, and went to the hotel and took over the possession of the property there. Mr. Hubbart and Mr. Hall were there at the time I made my first visit to the hotel. I asked Mr. Bickel to turn over

all the papers and money which they had. A few days later I prepared a letter which is court trustee's Exhibit A, and mailed it to the various persons named at the head of that letter.

Referring to Exhibit A dated June 1, Item 1 thereof consisting of two bonds were turned over a few days later. I think Mr. Hall brought those to me. Item 2, consisting of \$30,000 of second mortgage bonds have never been turned over and I understand are still over at City National. Item 3 is a list of the bondholders and creditors and claimants with their names and addresses. I got that as far as I could out of the court records here. Nobody ever furnished me with that list. Item 4 which is owners' guarantee policy, abstract of title, opinions of letter, all deeds and other title paper for all real estate or personal property, in which debtor has any interest—I have never received except the letter of opinion which Mr. Rathje furnished me. Item 5 is service contracts between the hotels. Some time later I asked Mr. Hall if he could find those and he brought certain contracts and documents to me. I don't know whether they are all of the documents. He produced

the contracts which was offered in evidence here yesterday, made between Barton and the Granada Hotel Corporation and he produced certain opinions made by engineers with reference to that contract. I don't recall at the moment what they all were, but there were several of them.

The income tax returns and other tax returns that had been made by debtor, which is Item 6, have never been furnished by anyone. Item 7 consists of appraisal, surveys, blueprints, drawings of buildings, grounds and machinery owned by debtor and all engineers' reports as to the condition and operation of the same. Except for the engineer's report that Mr. Hall brought and the blueprints that I found at the hotel, I have never received any.

Item 8 is all moneys which from the audit, now being made shall be shown to be in your hands or otherwise due from you to the debtor. The only moneys which came in was the check that I had received before that time on May 25 for \$773.80. I had called Mr. Bickel three or four times between the 20th and the 25th and asked him to send over the money and papers which they had and he said that he was going to pay his bills. I told him that was contrary to the order but I could not modify the order and he said that he would have Mr. O'Brien come in and get the court to change it, and he didn't do that and I finally told him on



the 24th that I was going to report the situation to the court. So Mr. O'Brien that day asked the court if they could pay some of these bills. I heard the court tell 777 Mr. O'Brien that he might pay such bills as I would approve, so Mr. O'Brien came to my office with a batch of bills and I checked them over and had them check over at the hotel and I said I would not object to the payment of those bills. Those bills were for merchandise and utility services at the hotel.

The next morning I called the hotel and told them to send the bills to me again, together with the checks, as I wanted to see the checks before they went out and when I looked them over that day, I found an additional item which had not been in there at all the day before, consisting of a bill and a check to the City National for trustees' fee. That check was about \$200.00. I called Mr. O'Brien and told him I would not release that. That I could not consent to it and I have retained that check and that bill in my files and still have it. When the bills were presented to me on the day before there was nothing of that kind and nothing was said about any payment to City National for its services. The day Mr. O'Brien called me and said that he had this money, \$773.84, that he was willing to pay over, I told him that I would not take it without an audit and he said that he would pay it without prejudice and I told him that if it was simply a payment on account without prejudice, I would take the check. He wrote me a letter to that effect.

(At this point there was offered and received in evidence COURT TRUSTEE'S EXHIBIT Y being a letter dated May 25, 1937, from Defrees, Buckingham, Jones & Hoffman by Vincent O'Brien, being the letter immediately 778 above referred to and EXHIBIT Y-1, being photostatic copy of the City National Bank and Trust Company check dated May 25, 1937, for \$773.40.)

Since that time I have inquired frequently with respect to obtaining other funds from City National Bank and Trust Company which I claim they have. There were no books at the hotel which showed what moneys the City National had. There was no way I could find out until they gave me an audit. I didn't receive that audit until August 25, but in the meantime I had made a check and had my auditor go through the records with the hotel on various matters for past years and I went over the property myself and I determined that a number of matters should be discussed and ought to be considered with refer-

ence to an accounting by the City National Bank and Trust Company. I made up a memorandum of those items and went over to Mr. Buckingham's office and spent some time with him discussing those items and a few days later, on the 28th of July, I went with Mr. O'Brien to discuss them with Mr. Leonard. I had furnished Mr. O'Brien a written memorandum of those items.

I asked Mr. Leonard to straighten out those affairs and told him about the taking away of the moneys after the 17th of May before I got to the hotel. I asked him to correct all of those matters. I left him and Mr. O'Brien in conference when I departed that day.

The items that I discussed with those gentlemen were the moneys that were taken away on the 18th and 19th of May.

There was also a question of the renting of the ball 779 room, the writing room, the solarium and the directors' room. There was the matter of the charges between the hotels and the matter of the incinerator. Perhaps one or two others. I do not recall now. One of the items discussed was the trip to the United States Supreme Court with reference to the *Harris vs. Tuttle* litigation. I told them I didn't see how they were going to justify that. I told them I didn't see how they were going to avoid making compensation to the estate for the failure to rent all of that front space, referring to the lobby, solarium, writing room and ball room on the first floor. They didn't seem to think it was necessary to rent that space at all. They didn't indicate that any effort had ever been made to rent it.

I don't know whether I discussed the incinerator that day or not. The incinerator consists of a place to burn the garbage, which is down in the basement in a large stack which goes clear through to the top of the building. It is built of brick. I have examined the incinerator inside and outside a number of times. I think it was around the middle of June that I first examined it. Upon subsequent inspection, I found that there were openings entirely through the inner wall of the incinerator; that the arches in several places had fallen in. The interior had to be entirely rebuilt.

I took bids from a number of contractors and had it rebuilt. I had the arches around the doors rebuilt and the stack rebuilt inside for a distance of twenty-four feet 780 at a cost of approximately \$500.00.

(There was offered and received in evidence as TRUSTEE'S EXHIBITS Z-1 TO Z-5 five pictures of the incinerator, one being an outside view and four inside views.)

The pictures clearly show the conditions which existed at that time. In one or two places here at the first floor, the inside wall was entirely broken through for a distance of two or three feet and there was a large crack on the inside of the incinerator in the basement and a similar large crack in the corridor wall at the back of the stack.

When I took possession there were no funds in the hotel office petty cash account at all. Mr. Hall came to my office late in the afternoon on the 18th and said that they had a \$400.00 hotel office account there and that the bank had taken it away. I told him that that should not have been done and that I would be up there as soon as I could get my bond approved and that I expected to find everything in exactly the condition it was when the order was entered. When I got there I found that that \$400.00 was gone and all of the other moneys which had been collected on the 17th were gone and the manager was operating without any cash at all in his cash drawer to take care of the normal operation of the hotel.

As soon as I received the audit on the 25th of August I called Mr. O'Brien and called his attention to the items at the foot of the last sheet. I said I wanted that money. He said he would have to think about it. I waited until the next day and didn't hear from him and called Mr. 781 Leonard. They said that he was at luncheon and a little while later they called back and said that he had gone to play golf.

The next morning I went to his office and waited about half an hour and finally Mr. Bickel came. I told him I wanted the money and showed him the audit. He said they had some other things to consider and they were not going to pay it over. I said "I want to talk to somebody final here—where is Mr. Clarke." He didn't think it necessary for me to see Mr. Clarke but I insisted and he took me to Clarke's office.

I showed Mr. Clarke the court order and told him I wanted the money. He said he didn't know anything about it. He asked Mr. Bickel why the court had ordered it turned over. Mr. Bickel said it was such a complicated matter it would take both him and Mr. O'Brien to explain it. Mr. Clarke telephoned a while to different people and finally asked me if I would not wait until Mr. Leonard came.

I waited until around 10:30 and finally I was admitted to Mr. Leonard's office. I read the letter to him, showed

him the audit and told him that I wanted the money and he called Mr. O'Brien on the 'phone and talked to him a while and said that under the advice of counsel he refused to pay it over. So the next day, or a day or two afterwards, this petition, which is now here under consideration, was filed. Mr. Clarke I spoke to is the president of the bank and testified yesterday. Since filing the petition here no further demands have been made upon the City National and nothing further done than what I have done here—asked witnesses here on the stand to pay it over.

Hearing resumed on October 6, 1937.

*Cross-Examination of Weightstill Woods by Mr. O'Brien.*

After I was appointed Trustee I had various conversations with you about the matter of account and data and papers and things that I wanted.

The check for \$773.88 was turned over to me May 25. That is the date that the letter was sent over to my office by messenger.

You were at my office the preceding day, the 24th, in the afternoon. We had a preliminary discussion about the unpaid operating bill. That was the same day that you orally brought the matter to Judge Barnes' attention. You brought the bills that you wanted to pay and I looked them over on the 24th. I think it was generally understood that there were other operating bills not available that day. There was no discussion that day about giving me a check. We didn't mention the matter of a check until the 25th, which was the day you called me and said you wanted to send it over. There was not any question on that day in reference to your turning over the balance without awaiting the receipt of the other operating bills. There was the question of an audit. I knew that there were other operating bills. I am not sure whether I knew that day that you had other outstanding bills or not. I don't think you knew either, that day. I don't remember you telling me that you had not been able to get in all the bills, particularly those from utility companies and there is nothing in your letter about it which you wrote the following day. My letter of June 1st, 1937, setting out a list of documents was addressed to all the people that I had been able up to that time to learn the names of who would be concerned in the operation of the property. I



do not recall, but you may have said on receipt of that letter that you would make a check of all of the files, not only of the City National but of the Central Republic, and others, and try to find those documents which I wanted. I didn't know that Mr. Hall got a good many of the things with which he supplied me from you. I didn't know where he got them, except on one occasion he told me that he had got a document from City National Bank. I don't recall that you personally turned over any document to me pursuant to my letter of June 1st except the check and the tax bills and the audit towards the end of August.

I gave Mr. Hall a receipt for the two bonds, which are Item No. 1 in my letter, but I didn't know at that time where he got them. I made inquiry of Hall as to the circumstances and conditions under which he held the \$30,000 of second mortgage bonds and demanded them as soon as I knew they were outstanding. You told me what your contention was about the circumstances under which they were held. I told you that I thought they belonged to the trustee and you didn't have any right to hold them, but you did tell me what your intention was and exhibited the instrument which you claimed supported that contention.

You also told me you had concluded to cancel those 784 \$30,000 of seconds under order of court. You may have told me when I inquired for a list of bondholders and creditors, Item 3 in that letter, that the debtor company had the list.

One of the things that the trustee was to do was to publish notice of the hearing fixed by Judge Barnes' order and send out copies of the plan to the second mortgage bondholders. As to the first mortgage bondholders, the notice was to be sent only to holders of non-deposited bonds. I had no way of knowing whether the Owners' guarantee policy and abstracts of title, if any, were in possession of the debtor company. City National Bank, as trustee, had been running various affairs of the debtor in reference to the personal property and in reference to the real estate. They seemed to be handling the whole situation and Mr. Rathje, I think, told me that he did not have the guarantee policy. In making the demand I don't know that the specific term mortgage guarantee policy is mentioned. There is language there in the document which includes all papers in reference to title.

I have been unable to find any receipts signed by City National showing that they had any Owners' guarantee policy or abstract of title or deeds; that is the only way I

could be sure. I think Mr. Leonard testified this morning that he had those documents and you contended that you should hold them. The only opinion letter I got was from Fred Rathje. I got a water press copy later from you on the Title Company form. That was furnished towards the end of the summer. I think the title letter was 785 made in March. Mr. Hall turned over to me, besides the Lewis engineering reports and also the Martin draft or copy of it, or both, a copy of the heating contract between the Granada and the Arlington. I cannot be sure without checking the files whether there are any other signed contracts or not. There were some unsigned copies. There were no copies of the Barton contract. There are copies of other contracts other than the Barton contract, between the Granada and the Arlington without signatures on them. Whether the originals were ever signed, I don't know. There appear to be two. I have not seen executed copies of them. I could not find out whether they were executed unless somebody would produce the original.

I went to the Granada to take possession the day my bond was approved, May 20th. I called in the morning as soon as the bond was signed, and told the management that I would be there that day. I don't recall your telling me that whenever I was ready to go you would arrange to have Mr. Hubbard or somebody at the bank there to meet me, but Mr. Hubbard was there when I went.

You may have been in my office the day I telephone Mr. Parker at the hotel, I am not sure. I told Mr. Parker I was coming out that day and I went that day. I don't know whether Mr. Hubbard was there waiting for me or not. Mr. Hall was there.

"Q. Well, did he tell you Mr. Hubbard was there?

"A. They were there with Mr. Parker having a discussion about bills.

786 "Q. I don't care about the discussion. But did he tell you he was there waiting to turn over possession?

"A. Well, he left immediately after I arrived. Nothing was said about possession."

(Witness resuming.) I never before took possession of any other property as a court officer. I conferred with Mr. Cunningham in respect to what mechanics or procedure is usually followed in taking possession. I don't remember when it was. I think perhaps on the 19th. I remember that when you talked to me there was brought up beside the question of the approval of these bills the question of the breakdown of the payroll

for those two days, May 15 to May 17. I had previously discussed that with Mr. Hubbart. You mentioned in your letter the moneys on deposit with the bank for social security tax. I was willing that it should be paid direct to the Government and I didn't know until I got this audit that you had not paid it. I didn't express any preference for you keeping it as against turning it over to me. I said it was satisfactory to me if you paid the Government, but you didn't do so and I am still liable. We have a Government ruling that the successor is liable. My auditor makes out a return for the preceding month for social security tax and I pay it that way. I understand that one is in default if one does not get it in the following calendar month following the accrual.

I have had occasion to make up an audit, or see one made up, covering several years of operation of a property 787 of this kind. I should think such an audit should be completed in four or five days. I remember you telephoned me and told me you were going on a vacation and asked whether it would make any difference if this matter were to await your return. That was in the middle of July. I was glad to continue it one week.

I was told by other quarters that you had a book relating to the Granada hotel affairs. Five or six copies of it were prepared in your office. You sent me a copy which you said was your private copy. I still have it.

The \$400.00 house fund was there in the hotel when I was appointed, but it seemed to me just as much a part of the hotel as the lobby chairs. I cannot see any distinction. It didn't make any difference who put it there. I don't know who put it there except what the witnesses have testified here, that it came out of the operation of the hotel. I have no personal knowledge of where it came from as I never heard of this hotel prior to May 17. I don't know whether it was sent down there from the bank or how it got there originally.

There was money, checks and cash taken in on the 18th and 19th at the hotel. Most of that money was check and you could not very well have cashed checks with checks. At that time of the month you don't get currency, you get checks. I had no authority to cash the checks. My duty is to put everything in the bank. My bond had not been approved. There was nothing I could do about it on 788 the 18th and 19th. I tried to get my bond immediately, but I had to get a copy of the order and I had to make my application; it took two days.

I think I have given the incinerator out there adequate attention. I looked at it about the middle of June. I had to have it rebuilt at the bottom entirely. I didn't get a court order before doing so. I had in mind at one time hooking up the incinerator with hot water heaters so as to supply hot water from that source. That is why I didn't attend to it immediately.

When I was appointed, the approximate yearly rental was \$100,000. I think the nettage before tax would be about \$2,700.00 for May of 1937.

As of September 30, 1937, the arrearage in rent collections was less than \$1,000.00. That includes not only rents, but other charges to the guests.

Mr. Schott said that he could not confer with me about the proper charge for heat and refrigeration, hot water furnished by this property to the other two properties, until after he had completed his report. I didn't tell him anything about the charges that had been made at any time nor did I tell him anything about what sum was in the respective litigation here. Prior to getting his report I talked to Mr. Loveless, head engineer at the Western Electric Company. He inspected the premises, but I didn't ask him to make a report. Mr. Schott examined the property sometime before I had Mr. Loveless up there,—perhaps 789 six weeks before. Mr. Loveless never got to the point of stating to me what he thought these services were worth. He wanted some additional information and I got busy with other matters. He has not made a report as yet. Besides Mr. Schott, Mr. Loveless and Mr. Clarence Johnson, consulting engineer of 29 South La Salle Street, there was no one that I talked to who told me what the charge was for these services.

I found out very quickly after I went in that the Granada was furnishing these services. I immediately told Mr. Bickel and Mr. Hubbart that I wanted more money for the services to the Arlington.

I served demand during Judge Barnes' absence that unless I was paid \$1000.00 a month I would apply to the court to have the services shut off. I followed that up with a letter that unless the moneys were paid by noon on the day on which I was talking, I would shut the service off. I was at the time collecting \$600.00 a month and was furnishing no heat during that time. I stood ready to give the heating service at any time that it was necessary. I don't know the number of units at the Arlington that were already operating with individual electric refrigerators



owned by Arlington. I never tried to find out. It was not any of my business.

At the time I filed my list of objections in this proceeding I was aware of the zoning ordinance and its effect, in relation to this Granada hotel property. Before filing 790 this petition I didn't make a search for cases decided by the Supreme Court of Illinois bearing on the question as to the right and power of the trustee in possession to make alterations and improvements calculated to produce additional revenue. I made an investigation of the law to determine whether the trustee in possession was entitled to compensation for services in operating the property and found a statement in Ruling Case Law to the effect that they are not entitled to compensation unless they have a specific provision for it. I read the trust deed in this case and found they are not entitled to any compensation. I found a provision to the effect that the trustee should be entitled to reasonable compensation for operating the property under certain conditions but those conditions do not pertain here. I so set forth in my answer and counterclaim. Before preparing and filing the formal and printed objections here, I furnished your office and the bank with a memorandum of those contemplated objections. Reference to that memorandum was made in the conference which I had with you and Mr. Leonard. He had a copy of it in front of him at that time. I don't remember Mr. Leonard making any suggestion as to the seriousness of charges of that kind being made against the trustee. There were matters which I thought should be corrected. I supposed they were serious statements and charges. They speak for themselves. In the conference with you, myself and Mr. Leonard on July 28 I said that those matters must be taken care of. As near as I can recall, you and Mr. Leonard took the attitude that none of those items were of any 791 importance. I do not recall that Mr. Leonard told me that you didn't think the trustee had done anything wrong which would warrant its making any payment. I recall Mr. Leonard said that whatever Mr. Bickel had done he would approve and stand behind it.

"Q. Do you have any pending application for the renting of this lobby space, or any part of it?

"A. I have talked to a number of people the last two months about it, yes.

"Q. Well, will you answer the question? Have you any pending application for the renting of that space, or any of it?

"A. I think I could make a lease if I had a sufficient tenure to make it; but my tenure only runs for fifteen days at a time."

I haven't made any effort to close a lease. I have talked to and been considering the persons who are interested in the property. I haven't any formal application or request for a lease.

I didn't make any specific study of the law of Illinois in respect to the right of the mortgagee in possession to make a lease extending beyond the period of redemption. I wouldn't want to say what the law of Illinois is on that without looking it up.

I think I could get a tenant for the Directors' room for one year. The ball room space and the solarium and writing room I think would take perhaps two or three years. I do not think you can get a person to take it for a single year. I know that it was determined by this court that

792 the stock of the Granada Apartments, Inc. and also a large portion of certain of the junior evidence of indebtedness are and for a long time past, have been owned by the Ingersoll heirs. The record also shows that prior to that determination those items all on deposit with Fred Rathje in escrow or as trustee were claimed by the Ingersoll heirs and by Wenstrand. I have no knowledge as to when they acquired those interests. I was not concerned with who had them or when they got them until the claims were filed here in court. If these proceedings had gone forward here two years ago, you would have been in exactly the same situation you are in now. The court would have determined that matter then.

I didn't make any check or investigation with any of the title officers, or anybody else in the Chicago Title and Trust Company, to see if one can get a title policy covering the reorganization proceeding in 77B predicated on involuntary petitions not based on an act of bankruptcy or an equity receivership. I don't know that even today, the Title Company will not issue such a policy except where the debtor corporation comes in and files an answer amounting to a voluntary petition.

I didn't find out nor ask any of you whether you had ever tried to get the corporation to file that kind of an answer in the old proceedings.

"The Court: Did anybody?

"Mr. O'Brien: They certainly did.

"The Court: Who made the effort?

"Mr. O'Brien: I did.

793 (Witness resuming.) I do not know that if the Granada should choose to send its valet work out to various local dealers that it can obtain a commission from them equal to the amount that the valet of the Granada was paying to the Arlington. I am told you can get ten or fifteen per cent but I didn't inquire about it.

There was a proceeding pending in the Circuit Court of Cook County brought by the Attorney General—*People vs. The Cody Trust Company*, which is B-282129, which was pending in 1934 for the winding up of that company. Charles A. Albers was appointed receiver and is still acting.

I knew that Reconstruction Finance Corporation was said to have loaned some \$80,000,000 or \$90,000,000 to the Central Republic Trust Company. They pledged a lot of assets to secure that loan but I don't know whether they pledged them all or not. I have looked into certain phases of that loan.

I think that about in April of 1934 the Chicago Title and Trust Company, as receiver in the State court foreclosure matter made a payment on account of the receiver's certificate of indebtedness.

"Q. In your written objections you say that City National made that payment. Do you care to correct that at this time?

"A. Well, I say in there that they are responsible for what their predecessors did, because they did not make proper inquiry.

794 "Q. No. You say that the Trustee, whether the City National or its predecessor, made payment. Do you mean that literally?

"A. Well, I could not tell without checking just when the different items were paid."

(Witness resuming.) I think there is language in the order directing the surrender of possession by the receiver to Central Republic; that the trustee assumed payment of the receiver's certificate of indebtedness. There is also language in the order to the effect that the receiver, within so many days thereafter, file its final report and account and that on approval of that account, certain funds in its possession be paid on account of the receiver's certificate of indebtedness. I could not say without seeing the checks the specific amounts that had been paid by the receiver on account of the receiver's certificate. I find orders to the effect that at the time the receiver's certificate of indebt-

edness was issued by order of the State court the right of Albert Pick & Company, or its successors, in and to the items in question had been determined both by the decree of the Chancery Court and affirmed by the upper court.

"Q. Well, do you know—can you think, under those circumstances, of any other way of keeping this property intact and keeping it occupied, than by acquiring those fixtures, items there owned by Albert Pick?

"A. Well, Mr. Sturm testified here the other day 795 that in the case of the Lincoln Park Manor, they did not buy the furniture. I don't know why the Arlington did any different.

"Q. Did Mr. Sturm also testify that the Lincoln Park Manor is being operated by Logan-Mullins as receiver?

"A. I do not see that it makes any difference whether it is operated by a receiver or by a trustee; it is the same proposition.

"Q. Well, it so happens, does it not, that the furniture of the Lincoln Park Manor is owned by the owner of the equity to the real estate.

"A. I don't know that.

"Q. Well, you did not check to find out about that?

"A. I did not check to find out about it, no, sir.

"Q. On the Granada, the items in question were owned by an outsider, the International & Industrial Securities Corporation, which had no other interest in the property.

"A. There were all the other items in the Granada which had been taken out by the Pick Company, owned by an outsider.

"Q. That is right. That was the furniture, and the furniture had been replaced, had it not?

"A. Yes; and the Appellate Court of Illinois rules that you could take out all of these additional items without any harm to the building; that is what they put in their opinion.

796 "Q. Did you make the check to see if those could be replaced if they were taken out?

"A. Well, they are standard furniture. I suppose you could buy them from any furniture dealer.

"Q. You think they were furniture?

"A. The witness here on the stand the other day who went up there and examined them, testified he could buy them from a number of houses here in Chicago.

"Q. Well, are you sure he could? Let me put it this



way: Supposing that Picks took out their furniture, as you call it, these—the Ozite, all the carpeting, all of the in-a-door beds, all of these big kitchen cases and china cases; do you think you could have kept your tenants?

"A. Of course, you would have had to supply other furniture or have to rent these."

(Witness resuming.) Some of the tenants in there today supply their own furniture. They do not want to use the hotel furniture. I am not sure that any of them supply their own china cases, which are the dividers between the kitchenette and dining portion of the room. I am not sure about there being any apartment in which they supply their own in-a-door beds. They do not supply the big kitchen cases for service from the corridor outside. I presume those are fastened.

"Q. I gather from your questions that you thought somebody ought to have gone out and sued on the circulars; and let Pick take out their stuff; is that correct?

797 "A. Well, if the trustee, while it has power under the trust deed to deliver that personal property, it certainly would have the power to make people pay for it who had agreed that the bondholders had a lien on it and should keep it.

"Q. Well, do you think they should have let Pick take out the stuff while they were having all that?

"A. Well, if I had been handling the lawsuit I would have brought these other people into the lawsuit and would have had the Court make them pay Pick for it."

*Redirect Examination by Mr. Rosenstone.*

There are bills which have come in since Mr. O'Brien's letter dated May 25, 1937 which were contracted prior to May 17, by the City National Bank. Sometimes bills have been paid by me. I paid the City of Chicago \$25.00 to keep the awning out in front. That bill had been running since January but was not presented to me until the latter part of June. They were going to take the awning down. Then I paid the Illinois Bell Telephone for service prior to May 17 in order to have the service continued. I also paid City of Chicago the water bill prior to May 17 to keep them from cutting the water off. In each instance before paying I sent the bill to City National and called Mr. Bickel and O'Brien and told them they were threatening to cut my service off and I wanted those bills taken care of. They didn't pay them and I had to.

Neither Mr. O'Brien nor anyone else, before June 25, ever suggested there was any uncertainty in the order of any specific thing in the order of May 17 which was a basis for the refusal of the City National Bank to pay these funds over to me. No one ever suggested there was any uncertainty in the order until we were half way through this trial. The funds on hand, as shown by the various accounts entered in evidence are evidenced by six items. Exhibit T shows a balance of \$36.00; Exhibit T-1 a balance of \$7.70; Exhibit T-2 a balance of \$4.78; Exhibit 9 a balance of \$182.66; Exhibit 10 a balance of \$1,507.76 and Exhibit T-14 a balance of \$200.20, totaling \$1,959.10. The sum of \$160.47 referred to in Mr. O'Brien's letter of May is included in T-9. Toon testified yesterday that the Government had been paid. The Government Agent came to my office once and wanted the money and I told him that the City National should have paid it to him. He hasn't been back since.

*Recross Examination by Mr. O'Brien.*

You sent to me the audit, which is a copy of the one attached to the report and account, on August 25 and I called you up and told you I wanted the moneys concerned in the approved distribution account. You said that you wanted to look into it. I think I called you back the next morning. I didn't go to the bank the next day, I went to the bank at 9 in the morning, but that was not the next day. My diary shows it. I have it right here. I talked to you on the 25th of August, 1939. The diary shows that on the 26th of August I talked to the City National and also to you. Now, on the morning of the 27th I was at the City National. An appointment was made with you. Thereupon, court trustee rested with the reservation that they could put in evidence on the petition filed by the trustee later.

A. J. SCHANFARBER, called as a witness of City National Bank and Trust to testify:

*Direct Examination by Mr. O'Brien.*

I am an attorney at law duly licensed to practice in the State of Illinois and before this court. I was general counsel in New York for Albert Pick & Company for about three or four years. I was general counsel in 1932 at the end of which year; or the early part of 1933, the company went into receivership. I then became associated with the International & Industrial Securities Corporation as counsel. A claim of Albert Pick & Company had been assigned as security to International & Industrial Securities Corporation for moneys that it had advanced to Albert Pick & Company. In the course of my duties I became familiar with the litigation conducted in Cook County by and between International & Industrial Securities Corporation and Central Republic Trust Company relating to Granada Hotel. Albert Pick & Company had supplied a great quantity of the furniture, furnishings and fixtures for that hotel at the time the hotel was built back in 1924 and took a chattel mortgage to secure 800 the purchase price of those furnishings and furniture. Our local counsel were Ringer, Wilhartz & Hirsch. The Picks foreclosed that chattel mortgage and bought in at the foreclosure sale the equipment covered by the mortgage with the exception of certain property, reference to which the contention was made that they were fixtures. Picks then applied to the Superior Court of Cook County in the foreclosure proceedings for leave to take out the property so purchased at the Master's Sale. Judge Gentzel allowed us to take out loose equipment but reserved jurisdiction to determine whether the china cases, kitchen cases, in-a-door beds, carpets and ozite were part of the building and the real estate mortgage security, or were property under this purchase at the Master's Sale. Later Judge Gentzel determined that these items belonged to International & Industrial Securities Corporation and the petition of Central Republic Bank and Trust Company, as Trustee, for certiorari was denied by the Supreme Court. Prior to that time we had some litigation in the United States District Court for the Northern District of Illinois. That was a suit brought

by Elof Wenstrand against Albert Pick & Company. I think that was an injunction proceeding. We were successful in this court and afterward the petition for certiorari was denied by the United States Supreme Court. I am not familiar with everything that took place in the proceeding. I know there was a temporary restraining order granted that was later dissolved and then there was an appeal taken and then, if I am not mistaken, there were surety bonds put up in both proceedings to the extent, I think, of \$40,000 or \$45,000. After you lost that State court litigation, you made an effort to acquire from International & Industrial Securities Corporation the so-called fixture items. I met you in Ringer, Wilhartz & Hirsch's office sometime during 1932. I was here from New York for the purpose of discussing this matter and another matter we had here. At that time, there was pending in the Federal court litigation the suggestion of damages against the surety company. I was counsel for the company and had to have approval of any settlement or adjustment of this matter, but they generally followed my recommendations.

During our first discussion I was not willing to sell these fixture items to the State court receiver. I think I told you at that time that we wanted to settle all the litigation at one time—that we would not settle one without the other. I gave you a figure, I think, of approximately \$50,000 to settle the entire litigation.

(Thereupon there was marked for identification as City National's Exhibit A a letter written by Mr. Sidney J. Wolfe of Ringer, Wilhartz & Hirsch, to Mr. O'Brien.)

City National's Exhibit A for identification bears the genuine signature and handwriting of Mr. Wolfe. The figure there set forth refreshes my recollection as to the exact amount of the offer. It was \$51,531. \$18,000 was the price I then put upon the building equipment in the Granada.

(Thereupon certain documents were marked as a group City National's Exhibit B for identification and Exhibit C for identification.)

City National's Exhibit C for identification is a copy of the specifications for in-a-door beds, china and kitchen cases at the Granada Hotel. Those kitchen cases and china cases were delivered to the hotel knocked down. Specifications in respect to the wooden paneling to which the in-a-door beds were attached was requiring a special designed paneling to fit this particular bed. There was



and is no other in-a-door bed manufactured that I know of that would fit that paneling and the hardware. There may have been some, but I know that this paneling and these openings were fabricated and put in especially for this bed. The opening for the service door into the kitchen cases is all set out in the original plans, if I am not mistaken, and we built the equipment to fit in with those plans. There is a refrigeration unit in those kitchen cases which is connected up with the central system from pipes extending through the corridor walls, if I remember correctly. The upper portion of the cabinet has no back to it. The back of the service door is the back of the cabinet. It passes in milk and other items. The in-a-door beds were patented articles made by the White Door Bed Company, a wholly owned subsidiary of Albert Pick. The kitchen cases were specially built by the White people. No other manufacturer made these same beds or kitchen cases. There were similar items on the market but 803 not the same. There were in-a-door beds but not others that would fit this paneling. At the time you concluded this settlement with me the White Door Bed were not in business. At the time the settlement was made you could not buy this cabinet in stock anywhere that I know of.

City National's Exhibit D appears to be a group of invoices from Albert Pick & Company covering the kitchen and china cases and in-a-door beds sold to Granada.

Thereupon, the witness was asked as to the total cost for the in-a-door beds in the year 1924 to which Mr. Woods made objection and it was sustained.

Mr. O'Brien stated that he desired to show the sale price and market value of the items at that time and then show the depreciation from the sale price. Exception was taken to the court's ruling.

"Mr. O'Brien: Do you know what that type of bed was worth—what was the fair cash value of that type of bed, installed in hotel apartments of this kind, in the year 1933?

"Mr. Woods: If the Court please, I object to that.

"The Court: No. That is not the question. The question here, as I see it, is what that stuff is worth to anybody that would take it out. Now that is what it is worth.

"Mr. O'Brien: Well, is the Court so ruling?

804 "The Court: I so rule. I so ruled the other day, otherwise I wouldn't have let the testimony go in.

"Mr. O'Brien: Your Honor, I offer to show by this witness the value of the items purchased from his client.

"The Court: Oh, I hardly think Mr. Schanfarber will hold himself out as an expert on values of hotel equipment. Do you think he would?

"Mr. O'Brien: Well, there has been no objection made on that score yet. I am trying to take one at a time. There is no doubt in my mind but what he is.

"The Court: Maybe he is. I don't know.

(Witness resuming.)

"Mr. O'Brien: Well, I think maybe I can show it.

"Q. Were you, during the year 1933, familiar with the fair market price of in-a-door beds, kitchen cases, china cases and carpeting of the kind that was then in the Granada Hotel?

"The Court: Second-hand.

"Mr. O'Brien: Well, we will take it new, first.

"The Court: I am not interested in new.

"Mr. O'Brien: I am merely trying to qualify the witness and offer it for that purpose.

"The Court: What we are interested in is what this stuff was worth—it had been used for years—what was it worth taken out. If he knows, he can tell us that.

805 "Mr. O'Brien: I am not offering to show your Honor what it was worth at that time. I have not come to that yet. I am now qualifying the witness.

"The Court: Are you objecting? If you don't object—

"Mr. Woods: I am not objecting to his qualifying the witness.

"The Court: I have no objection to qualifying the witness on any relevant question. If it is an irrelevant question, we don't want to spend time on it.

(Witness resuming.) From my connections with this company in the year 1933, and prior years, I became familiar with the fair, reasonable and customary market prices of the items which I had described in Chicago, Illinois, and throughout the United States. I had to do with, I would say, five hundred hotels that were furnished in this way. I handled my company's end of the reorganization of the Book-Cadillac in Detroit and many other hotels throughout the United States.

From my experience, I would say that the fair market value of these White in-a-door beds in Chicago in the

year 1933 i.o.b. the premises installed would be between \$40.00 and \$50.00 a bed.

"The Court: You mean you would be willing to pay for these beds after they have been torn out forty or fifty dollars apiece?

"The Witness: No, sir.

"The Court: What do you mean?

"The Witness: I mean the fair market value of those beds now, installed, was between forty and fifty dollars a bed.

806 "The Court: What would you have been willing to have paid for them after they had been used that number of years and been torn out?

"The Witness: Out of the property?

"The Court: Yes.

"The Witness: Very, very little.

"The Court: They were junk.

"The Witness: We wouldn't have had any place for the beds, nor would we have had any place for the cabinets, nor the ice boxes—but in the property I would say they were worth considerable money.

"The Court: Replacement new less depreciation.

"The Witness: Yes, Judge, replacement would cost them pretty near as much as the original cost.

"Mr. O'Brien: Q. What do you think they were worth as they stood, as depreciated?

"Mr. Woods: We object to that.

"The Court: Sustained.

(Witness resuming.) I think you told me that there was approximately 6,000 yards of carpeting and ozite in the building in 1933 that was purchased in the summer of 1924. Assuming that it cost \$25,000, in my opinion it is worth, in 1933 in the building—

"Mr. Woods: We object to that.

"The Court: Sustained."

The trustee-in-possession of that carpet and ozite, and those cabinets and those beds—from a person, firm or corporation—

"Mr. O'Brien: Except for one thing. The trustee-in-possession did not buy them.

807 "The Court: He took the money out of the estate.

"Mr. O'Brien: Not that I know of.

"The Court: They seem to be trying to get the money now.

"Mr. O'Brien: That is not the record here, your Honor. The record is that the State Court receiver bought them.

"The Court: The State Court receiver bought them from a person, firm or corporation that had a right to take them out of the building.

"Mr. O'Brien: That is right.

"The Court: The question is, what was the right to take them out worth? It was worth what the junk was worth.

"Mr. O'Brien: The State Court did not look at the problem in that way, your Honor. The question from the standpoint of the bondholders was, what was it worth to keep them in, and that depended on their value in there. It was the replacement value less depreciation.

"The Court: Oh—

Théreupon, Mr. O'Brien offered to show by the witness what the carpets, ozite, in-a-door beds, china and kitchen cases were worth in the year 1933 in Chicago, Illinois, installed in the Granada Apartments.

"The Court: Is there any objection?

"Mr. Woods: We object to that testimony.

"The Court: Sustained.

(Witness resuming.) I finally agreed to take \$22,500 for those items. You told me you did not have the 808 money but that you thought that perhaps you could get the surety company to put up some money in connection with the matter. We had considerable discussion as to the measure and extent of the liability of the surety company on the bond which had been furnished in that Wenstrand litigation. You called my attention to the fact that subsequent to the time that Judge Wilkerson dissolved the injunction order there was no order entered in the proceeding reinstating the injunction pending the appeal. It was your contention that pending that appeal we were not restrained and could have taken our stuff out at any time. You submitted some authorities to me that convinced me that the basis of recovery, if there could be a recovery on those bonds, would not run into a lot of money.

You told me that the provision for the payment of attorneys' fees in the new bonds were in violation of the statutes of the United States, providing what the condition of an injunction bond should be and that there was surplusage and could not be enforced. Ringer, Wilhartz & Hirsch, our attorneys, asked \$10,000 attorneys' fees as a reasonable value of their services in connection with this suggestion of damages. I spent a lot of time on the law after I discussed it with you and there was



considerable doubt in my mind as to whether or not the new bond that had been furnished had acted as a super-seedeas which had prevented us from removing the property. After that I made you a proposition that we 809 would take \$22,500 for the equipment. I did not think you could replace this equipment for a cost of less than \$20,000 to \$25,000. I knew the problems you would be up against if you took it out. I knew you would have to replace and I knew that there would be some loss of rentals and inconvenience to your tenants. In none of the 500 hotels in similar circumstances that I participated in were we permitted to take this type of equipment out. We have taken equipment out of smaller spots; but on an item like this, I don't think we removed the equipment twice in my experience. Either the trustee under the mortgage or the receiver or the owner in possession always worked out some deal with us.

Met pursuant to adjournment October 7, 1937.

Present:

Mr. Woods,  
Mr. Rosenstone,  
Mr. O'Brien.

A. J. SCHANFARBER resumed the stand;

*Cross-Examination by Mr. Rosenstone.*

I am practicing law in Chicago and was doing so in 1933, and in that year was not engaged in any other business. I was acting as counsel for Pick & Company at the time they made this sale to Granada Hotel. I was not acting as general counsel at that time. That was back in 1924. I represented Albert Pick & Company from about 1918 to 1934. I went to New York in 1929 to represent them as general counsel and was there until 810 1932, then came back to Chicago, where I have been since. I was never engaged in the manufacture or sale of carpets or things of that sort, and had nothing to do with that while with Pick & Company except that I passed on all large-sized contracts for large installations. I have not made any examination of the carpets, ozite and in-a-door beds and kitchen and china cabinets in the Granada Hotel since this matter was adjusted. I had an examination made there at the end of 1931, or the early part of 1932. I don't think I examined it per-

sonally. I do not know the present condition of those articles. I know about the condition of them in 1933. I had a complete report of the condition of the equipment before we made the adjustment.

Ozite is a hair felt that is put under carpets as padding and is fastened to the floor by sort of a glue, but it is easily removed. It can be used on a cement floor glued on. I don't know whether this particular ozite is cemented to a wooden or cement floor. It wouldn't make any difference. There isn't much difference in the value new or after it is used seven or eight years except that it may need a little filling in in spots. It may be removed so that it is usable very easily. You can remove it with your hands. It will leave some of the hairs off the ozite but not enough to make any particular difference. I am not positive, but I think there were approximately 6,000 yards of carpet described in the bill of sale from International & Industrial Securities Corporation to the Central

Republic Trust Company dated August 18, 1933, and 811 about the same amount of ozite.

I think there were between 150 and 160 in-a-door beds and the same number of kitchen cabinets and about the same number of china cabinets. I don't know whether they are still in the Granada Building or not.

The replacement value is the approximate cost of putting the equivalent of something back in its place. It has no reference whatsoever to the value of the article that is taken out. It is the particular use that the article is used for and what it would cost to put something in the place of that article. What it is worth taken out has no basis in the figure at all. The valuations I gave yesterday were what, in my opinion, it would cost to replace the goods and property with new goods of a similar nature and character.

I would not say that the value of that property taken out in 1933 is worth over \$3,000 or \$4,000. The ozite lining would be worth about fifty or sixty cents a yard. The carpet would only have a second-hand value and the in-a-door beds would be worth, if any, not over \$5.00 or \$10.00 apiece.

The kitchen cabinets out would be worth nothing. You might be able to get \$400 or \$500 for the 6,000 yards of carpet, and for the ozite about fifty or sixty cents a yard. The value of the articles removed might run from \$1,000 to \$1,200 over or under the figure I gave but so

812 far as their value compared with the cost or value of the property in there it would be nil.

Referring to Trustee's Exhibit O-3 (the report made by Mr. Lenz as to the valuation of those articles in 1933 taken out) I would agree with his figures except as to the ozite on which he has a value of \$100. I would put a value on it of at least \$2,000. The fact that the ozite is glued down to a rough concrete floor would not make much difference in my valuation. I would say that the fact that it had been used for a number of years would depreciate the value about 50% of its original cost. After ozite has been taken up it can be reused. Fitting in places that may need filling in is not anything that has to be according to specified sizes. It does not have to be remade in order to be usable. You can fill it in in certain spots where the hair might happen to be thin. That is about all. Personally, I don't think that there would be any market at all for the kitchen, china cabinets or in-a-door beds if they were out of there. His price is about \$1,400 on those things, but you may have been able to sell them to some second-hand man or something. In the aggregate, there isn't much difference in my estimate if that were taken out.

*Redirect Examination by Mr. O'Brien.*

As a rule Albert Pick & Company took chattel mortgages or conditional sales contracts to secure unpaid balances depending on the State it is in. We had to pull 813 out the furniture and equipment in very few cases.

I don't think that this property would have any resale value, or very, very little outside of the oziting. The same is true of similar equipment in any large hotel. It would take a lot of labor to remove those items.

The kitchen cases of the type in the Granada last as long as the building lasts. China cases, outside of the broken glass, and refinishing and painting; last as long as the property lasts and so will the in-a-door beds. There would be a difference in value, in my opinion, if you assumed that the items were to stay in place in the hotel. That is the way I figured it when I made my adjustment with you—that is, on the value of the property in place and the replacement cost if you wanted to put in equipment of a similar type.

"Q. On that basis, what is your opinion as to the value?

"Mr. Woods: I object to that, your Honor.

"The Court: Sustained.

"Mr. Woods: It is the wrong measure of damages.

"Mr. O'Brien: I am not sure I have got it clear in the record, and I therefore should like again to offer to prove through this witness, that the value of the in-a-door beds, china cases, kitchen cases, Ozite and carpet in the Granada Hotel during the year 1933, in place in that hotel in its then condition, was at least \$20,000; I make that offer to prove that through this witness.

"The Court: Any objection?

"Mr. Woods: Yes, we object.

"The Court: Sustained.

"Mr. O'Brien: Exception."

JOSEPH K. BRITTAIN, called as a witness in behalf of  
City National Bank and Trust Company:

*Direct Examination by Mr. O'Brien.*

I live in Chicago and am in the real estate business. I have been for over forty years and practically all of that time in and around Chicago. I am a member of the Chicago Real Estate Board and was its president in 1926. I was a charter member of the Illinois Association of Real Estate Boards and acted as their President in 1920, also of the National Association of Real Estate Boards and I have held offices on the Executive Committee and as Treasurer at one time for four or five years. In 1930 I was appointed on Governor Emerson's Tax Conference and was chairman of the Executive Committee at that conference. I have also acted as Stock Trustee and Trust Manager in respect to various reorganized parcels of real estate in Chicago. I do a general real estate business and of late have been called in on many appraisals.

I manage properties; represent clients in their real estate matters; have operated quite extensively on my own in building and subdividing. Within the last five years I have been in a position to act as a member of a bondholders' committee, which has brought me into contact with a good many buildings. I personally checked those buildings and their operation. I visited the Granada Hotel at your request. I went through the lobby space at the hotel and ascertained in a general way the nature of



the improvement on the property. I made inquiry about the number of units and apartments in the building. I also gave some attention to the condition of the surrounding neighborhood.

Trustee's Exhibit C substantially represents the set up of the lobby space and floor plan. I would say that the lobby space is more than normal and more commodious than really necessary. I would say that as the space now stands the building is not designed for shops or for a dining room or a tearoom. If shops or a dining room or a tea room were to be installed it would be necessary to remodel to accommodate them. There would be some expense involved there. You would have to remodel it for any commercial purpose. The ballroom space might be remodeled to accomodate a tea room or a dining room.

To the rear of the ballroom space I found a small room that is being used for kitchenette or kitchen purposes. I would call it a service kitchen. I do not think it would be adequate to service a dining room if one were occupying this space. It is not large enough. It would have 816 to be considerably remodeled and probably enlarged.

If that space were to be remodeled and rented for that use it would be necessary that the tenant provide equipment to operate it. They would have to prepare the kitchen for the necessary operation of a tea room and, of course, have their tables and chairs and cashier's quarters and the usual equipment that goes into a restaurant or tea room. To adequately equip a restaurant or tea room in this space it would cost a number of thousands of dollars. I made no investigation as to what the exact cost might be. It is an expensive operation. The apartments in the building are kitchenette. Arlington Place is zoned for apartment hotels and the property west of Clark Street on Arlington Place is occupied by apartment hotels and rooming houses and some residences. I would classify the general neighborhood as of mixed character.

The Granada and the one across the street and the one somewhat west, which I happen to be interested in as a bondholders' committee, are pretty fair buildings. Some of the other buildings in the immediate neighborhood are old. Some obsolescent property. The only business center there is Clark Street, which is zoned for business. Arlington Place, as I remember, terminates about Clark Street. There are business houses scattered along Clark Street. The Granada is, I imagine, about 250 or 300 feet away

from Clark Street on Arlington Place. The traffic there is about normal traffic that you find on any street of 817 that type occupied by apartment buildings.

I am not at this time operating any hotel properties directly. The most recent experience I have had with a hotel property is that I was President of the corporation on the reorganization plan of the Rogers Park Apartment Building, which is on Sheridan Road and Pratt Boulevard. It is a well populated community. There is considerably more traffic on Sheridan Road and Pratt Boulevard than on Arlington Place. Arlington Place is just a quiet side street. At the Rogers Park Hotel they had a dining room space provided as a part of the original design.

My experience with Rogers Park Hotel extends over several years. It is an apartment hotel with kitchenettes, some 341 units, as I remember. It is zoned for commercial purposes and there are some five stores in the building. The stores and restaurant open on to the street. There is no restaurant open there now. It has been closed. When I took over that building we had a tenant in the dining room paying about \$115 a month rent, struggling along and that engaged in a side issue of canning food, which became objectionable to us and we had to let them out. They couldn't make a go of it in the restaurant. We leased it to another tenant and they found it difficult to pay their rent and they dropped out of the picture. There was another tenant that followed them and they found it difficult to get along and they dropped out. The space is now vacant.

818 That condition is general and not confined to the Rogers Park Hotel. In the operation of hotel properties, especially kitchenette properties and, in fact, most any hotel, it is a struggle, except in the loop, and I think they are having difficulty to make the dining rooms pay.

If I had had control of the Granada property during the last five years, I would not undertake to find a tenant for the ballroom space as a dining room or a tea room. If I had an actual application for a tenant, I would hesitate to make the lease. You might find a tenant who would be optimistic enough to think they could go in there and equip that space for a tea room and draw in enough patronage to make it pay. I would feel that if I accepted a tenant like that I would be inviting trouble. They would soon be dissatisfied. I have no idea they could make a go of it. Such buildings as that that are attempting to have food

served in them have been having this experience: they lease out these rooms for restaurants, and the tenants fail; even where the management offers rent free, and heat and light, the tenant makes a failure of it. I have a client who has a hotel on the south side of some two hundred units similar to this one. They have been meeting with defeat in trying to maintain a dining room without loss and they are running it at a loss now although they operate it themselves. You have to have a good many people coming 819 and going in a restaurant to make it pay—especially in these times, with the high cost of provisions. I would not undertake to lease it. I would anticipate the disappointment of the tenant and disappointment of the management if you leased that as a tea room. I made quite a study of it. I stayed there quite a while and studied the lay-out of the building and the surroundings and I do not see that there is much opportunity to do any better in that building than you are doing today.

The ballroom is being used now for part of the year. The manager told me that some Women's Club brings in several hundred dollars and that there is an occasional dance there that brings in \$40 on occasions at night. If that is permitted to prevail, I think it is about the best service that the room can probably render to the building. I would be very careful in managing that building not to permit anything that might be objectionable to the morale of the property. I don't think the Club there is any objection. I would not have a bar in that space. It would make more revenue, but completely change the character of your tenancy, which would be undesirable. There is a very good class of tenants there from what I learned by inquiry. Some of them are in good circumstances,—some in very good circumstances, some of them in moderate circumstances. They seemed to be contented. They are a very good type of tenancy for that class of building and the character of the building can be maintained as it is.

820 The ballroom space, solarium and writing room are very attractive. The building could get along without the solarium, but it is a very attractive feature and no doubt of great value to the tenants. They use the so-called writing room for a ping pong table and they have a library there. The building is so constructed, as many hotels are, that there is more space in the lobby than is really necessary but the architectural design of the building and its construction has that space and it is desirable for the

tenancy and should be protected against any undesirable occupancy to keep the tone of the building up.

I talked to Mr. Parker in the manager's office. The manager's office is not excessive as to size but is about right in relation to the size and design and appointments of the rest of the structure.

There is adequate room there for a stationery room. Public space in the building is more commodious than a building of that size needs, but it is there. It is the first floor space which is not suitable for converting into rooms. The way it is laid out is very fine and it is impressive as you enter the building but if I owned the building I would not commercialize any of this public space. I cannot see how you could make any money out of it except for the use it is being put to today. It is not making much money but it helps to heat and light the space. The income from

the ballroom helps to heat and light the ballroom itself, not the building as a whole. As far as I can see, it is absolutely useless except for the purpose it is now devoted to. I cannot see that it can be used to a better advantage. You might lease it and have some discontented tenants in there in no time. I cannot see any commercial value except for the hotel's benefit. This present space, even if it is excessive has value to the hotel in the way of increased revenues from the rooms. It gives the tenants an opportunity to come down in the lobby and solarium for their rest and recreation. It has an appeal as you enter the building which I think adds value to the building generally.

I would not disturb the manager's office. It is not more elaborate in proportion to the building than any other manager's office in the different hotels. The manager needs about that space. I am talking about the 11 by 22 feet that the manager occupies.

As to the stationery room. I don't know how much stationery they have there. They have a vault there. I should think that is adequate for stationery. There is an auditor's room. I talked over with Mr. Parker whether the auditor's room would be ample for him. He said if he had to take it for that purpose, he could do it. I don't know what use you could put the manager's office to and make it pay anything.

The ballroom ceiling is probably ten feet high. I have no idea how high the office manager's ceiling is. It didn't



impress me as anything over the usual height for an office room.

822 "Mr. Woods: If the Court wishes to know, the ceiling in the directors' room is about 12 feet high, and in the ballroom, I should say it was about 18 feet high.

The first floor of the hotel, the lobby floor, is on three levels, and that extra height goes into the ballroom."

The basement is cut down for the ballroom.

*Cross-Examination (Mr. Brittain) by Mr. Rosenstone.*

I have a general real estate business and operate generally throughout the City. For a good many years most of my operations have been in south side properties. I have not been a hotel manager. I have been a real estate manager. I have never operated a restaurant. As a real estate operator I have had a renting business for years and have rented apartments in and out of hotels. I have not been in the renting business for the past ten years. I am not connected in any way with the City National Bank and Trust Company. I am on a Lackner & Butz Protective Committee but not one that the City National Bank is interested in that I know of. In serving on that committee I have not had charge or general management directly of any hotel. I have guided the management and advised them.

If the ballroom were used for a tea room or a dining room customers could enter it immediately from the lobby of the hotel. I do not think that the stage that is in the room would interfere in any way with the operating of a tea room.

823 Whether or not the kitchen at the rear of the ballroom marked on this map "Serving Kitchen" would be sufficiently large to serve the ballroom for a tea room or restaurant purposes would depend on how much trade you had. If you did the maximum amount of trade that the sized room would accommodate you might get along but it would be a great deal better if it was larger. I think the serving kitchen as it is now could be very easily enlarged by extending the room to include what is called the auditor's room on this plat. It would not entail a great deal of expense. It would be possible to put in a dumb waiter from the serving kitchen to the basement. I didn't go in the basement but presume it is of normal height there. Whether it would entail more than an opening through the floor, I don't know. I am not an expert contractor.

I have had a lot to do with making alterations in buildings and find I am disappointed in the cost over and above what I anticipated in the beginning. Alterations are expensive work. I don't know how many people could be accommodated in the ballroom if it were arranged for a tea room. I didn't measure the room for that purpose. I don't know of any similar building on that street that has a tea room or dining room that has no direct access to the street.

I am familiar in a general way with the territory that runs from Clark Street west to Orchard Street and from Wrightwood to Belden Avenue. It is a thickly settled district and with a lot of very fine homes and apartment buildings, fire proof and semi-fire proof. There are a good many churches. It is one of the thickly populated districts of Chicago. It is one of the older residential districts.

I am not very well acquainted with the Belland Apartments Hotel at 2256 Cleveland. I am not very familiar with the Lincoln Park West, Belden-Stratford, the Webster and the Parkway Hotel.

There is a building on Arlington Place that I visited a week ago which is on the north side of the street and west of the Arlington. It is one of the Lackner Butz buildings that we have charge of. It doesn't have a restaurant or tea room.

The writing room across the lobby from the ballroom is about ten by fifteen feet. It may be larger than that (witness examines plat). It is seventeen by twenty-seven feet. It is difficult to answer whether it is possible to use those rooms for any other purpose than what they are used for now. They are large enough so that you could put a small store in there for magazines and things of that kind. It would be possible to use those two rooms for stores of that character; the space is there. If you rented them you would receive mighty little revenue. It is true that if those rooms were used for commercial purposes it would not be detrimental to the hotel, provided, of course, that it is a business that would be of no objection to the character of the hotel as it is rented today.

825 I do not think the stores in the Palmer House on State Street to Walsh Avenue detract from the popularity of that hotel. They have shoe stores, haberdashery and women's wear and things of that sort. They are very accessible to State Street which is a great business thor-

oughfare. Arlington Avenue is far different from State Street when it comes to merchandising. I would say the Palmer house stores are more accessible than they would be in the Granada where you go through a door leading into a narrow corridor and walk up some steps. It is true that in any of the large hotels throughout the City they have stores right off the lobby. They charge rent for them. I think there are a great many factors that enter into the financial difficulties of these apartment building. I think if they rented the floor space for commercial purposes it would be for very small consideration. I know what happened to the southwest corner of the LaSalle Hotel. I advised the hotel when they were building that hotel to put stores in there. They took my advice too late.

I was told by Mr. Parker that the ballroom in the Granada is used occasionally for parties and dances. If the ballroom were rented to a tenant for a tea room the tenant could still use the tea room for parties and dances. I would not give the tenant the privilege of carrying on dances in the ballroom.

If an attempt were made to rent the writing room and solarium I haven't any idea what rent should be paid. 826 If the ballroom were rented for a tea room or dining room rental should be a couple of hundred dollars a month. I don't think it would be possible to rent it for \$200 a month. If I owned that building with \$40,000 or \$50,000 of taxes against it, I cannot see how I could get revenue for the ballroom. The apartments of 114 units would be the uppermost in my mind. I acknowledge there is space there that is unnecessarily large, but what to do with it to make it pay I cannot see unless you put a bar in there and change the entire complexion of your building. If I were the owner I would endeavor to get more rent out of my apartments and try to do what I could with the ballroom and be safe. I can't figure out what could be done with it.

If I were on the verge of losing the building because I could not pay the taxes I would not depend upon the ballroom helping me very much in paying \$1500 in taxes. An owner or manager of a piece of property like this has to be alert to the changing conditions and it is true that because that ballroom was put in there ten or fifteen years ago does not mean that an effort should not be made by the present owner to get some revenue out of it. It would not surprise me to learn that the present trustee has had numerous inquiries from people who want to put a tea room in that space. I don't believe it could be used for

that purpose. You might rent it but you would be disappointed before you got through. That is my best judgment.

827 Thereupon, there was introduced in evidence as City National Exhibits D and E respectively certified copies of the injunction bonds in the Federal Court Pick furniture litigation.

Thereupon Mr. O'Brien offered in evidence CITY NATIONAL EXHIBIT C for identification, being specifications dated May 27, 1924, relating to the original purchase of the furniture items.

"The Court: The specifications aside from the prices may be received. Objections to prices, if made, will be sustained.

The specifications other than prices will be received. Objections to the prices if made will be sustained.

Are they made?

"Mr. Woods: Yes, sir, the objection is made.

"The Court: Objection sustained, to prices.

"Mr. O'Brien: Exception to the Court's ruling."

Thereupon, there was offered in evidence CITY NATIONAL EXHIBIT B for identification, being the invoices relating to the same items:

"The Court: Any objection?

"Mr. Woods: Same objection.

"The Court: Sustained.

"Mr. Woods: To that, your Honor.

"The Court: Sustained.

"Mr. Woods: They relate only to prices.

"Mr. O'Brien: Exception."

Thereupon, there was offered and received in evidence as CITY NATIONAL'S EXHIBIT F copy of warranty deed from Granada Hotel Corporation to Granada Apartments, Inc., dated April 29, 1929.

828 Thereupon, Mr. O'Brien offered in evidence the transcript of initial proceedings had before the court on this case on May 15, 1937, to show that neither City National or Committee, nor its counsel had any objections to the approval of the petitions which were approved and for the purpose of showing who did oppose the approval of the petitions and in relation to the point made by the Court Trustee that City National interposed the same objections here as it did in the old bankruptcy proceedings.

"The Court: Here is the impression I have had about your client: Your client wanted to maintain possession of that property, and objected to surrendering possession to



this Court; and not until the question as to the right of this Court to take possession was to be put to a test did your client surrender possession. Now that arouses in the mind of the Court the wonder as to why your client wanted to retain possession.

"The Court knows that in this city it was practically impossible to get a trustee under a mortgage to take possession of a piece of property on which it held a mortgage for the security of the bondholders, until the time came when somebody thought that if they could get a trustee in possession they could oust the District Court of the United States of jurisdiction in a 77B proceeding.

"Then Trustees began to take possession, and not until then.

"And then when this case comes in here, I see an 829 effort on the part of your client to continue to take possession, and then the Court begins to wonder why, what is there in this case that this Trustee should want to keep other people out of it? That is the reason we are spending a great deal of time.

"Now, I do not think your client did object to the approval of the petitions in this case, but your client did object to giving up possession, and that all has aroused in the Court's mind the question why a mere trustee should want to insist upon possession. Why? And if we have to spend a lot of time to find out, I am entirely willing to do it.

"If you think there is anything in there that will benefit your client, so far as the Court is concerned it is all right.

"Any objection?"

Thereupon the transcript of the proceedings was received in evidence as CITY NATIONAL'S EXHIBIT G the court at the same time putting in as evidence the transcript of the proceedings held May 17 wherein the court stated its reasons why it wouldn't allow City National to stay in possession and why he would take jurisdiction.

Thereupon, there was offered and received in evidence the CITY NATIONAL EXHIBITS H AND L photographs of the kitchen and china cases in the Granada Hotel.

Thereupon, there was offered and received in evidence 830 CITY NATIONAL'S EXHIBIT J photostatic copy of the original Trust Deed of Granada Apartments.

Thereupon, there was offered and received in evidence as CITY NATIONAL EXHIBIT K a fair copy of the chat-

tel mortgage of Granada Apartments, Inc. to Central Republic Trust Company.

Thereupon, there was offered and received in evidence CITY NATIONAL EXHIBIT L, the chattel mortgage notes.

Thereupon, there was offered and received in evidence CITY NATIONAL'S EXHIBIT M, the assignment of the chattel mortgage and notes by Central Republic Trust to City National.

Thereupon, there was offered and received in evidence, CITY NATIONAL'S EXHIBIT N, a fair copy of the decree of sale entered December 18, 1936, by the Superior Court.

There was offered and received in evidence as CITY NATIONAL'S EXHIBIT O, a copy of the petition of Central Republic Trust Company filed in the foreclosure proceedings for the issuance of the receiver's certificate of indebtedness.

There was offered and received in evidence CITY NATIONAL'S EXHIBIT P, the file copy of the order entered on the prayer of the aforesaid petition.

There was offered and received in evidence CITY NATIONAL'S EXHIBIT P file copy of the order amending the order evidenced by Exhibit P.

There was offered and received in evidence CITY NATIONAL'S EXHIBIT R file copy of order directing  
831 the surrender of possession by the Chicago Title and Trust Company, as receiver, to Central Republic as Trustee.

Thereupon, there was offered and received in evidence, as CITY NATIONAL'S EXHIBIT S a certified copy of the order of the Superior Court taxing the fees of Robert C. O'Connell, Master in Chancery.

Thereupon, there was offered and received in evidence the CITY NATIONAL'S EXHIBIT T, a collection of instruments consisting of the order of the State Court approving the account of the Central Republic Trust Company, including also the final account and report of William L. O'Connell, as receiver of Central Republic Trust Company and appended exhibits or photostats of those documents.

Thereupon, there was offered and received in evidence as CITY NATIONAL'S EXHIBIT V that portion of the transcript of record in the United States Circuit Court of

Appeals, case No. 5488, as includes the formal opinion of his Honor, Walter Lindley.

Met pursuant to adjournment October 7, 1937, 2 o'clock P. M.

Present:

Mr. O'Brien.  
Mr. Rosenstone.  
Mr. Woods.

JOSEPH I. McDONNELL, called as a witness on behalf of City National Bank and Trust Company and was duly sworn and testified:

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*Direct Examination by Mr. O'Brien.*

I live in Chicago and am General Manager of Hotel Windemere, located at 56th Street and Hyde Park Boulevard and have been since October, 1936. I have been engaged in the hotel business since January, 1919. In St. Louis at the Hotel Statler, and since that time I have operated as General Manager of the Chase and Coronado Hotels in St. Louis and the Evanston Hotel in Evanston, Knickerbocker Hotel in Chicago and the Chicago Beach Hotel in Chicago. In all of these properties I have operated the restaurants and catering departments. Some of those hotels also rented space for shops or other commercial purposes. In all of those properties we operated the dining rooms directly except at the present time where in the Windemere West we have leased the dining room. In every case, the hotel was built designed and equipped with dining room space. During all of that period I was familiar with the cost of food and provisions as used in the restaurant and dining room business, and also with labor costs.

I have purchased kitchen equipment and dining room equipment over a number of years.

I visited Granada Hotel premises yesterday afternoon to inspect the lobby floor and space with the idea of testifying here. In Court Trustee's Exhibit C I recognize the plan of the public space, the lobby ballroom, and so on. I don't know anything about the rooms because I didn't go beyond the entrance area. I saw Mr. Parker there  
833 yesterday. The lobby space is an unusually large amount of public space for a building with that num-

ber of units which, I understand, are approximately 118 or thereabouts. My understanding from information I obtained from Mr. Parker yesterday is that the majority of the units are rented furnished. They consist of apartments with pullman kitchenettes, in-a-door beds—also apartments with bedrooms, dinettes and kitchens. That of the total number of units about 18 are hotel rooms and the balance are definitely equipped with cooking facilities of some type.

To obtain auxiliary income from space that is not consistently used is always a desirable objective but one very difficult to attain. In the case of the Granada Hotel the space might feasibly or possibly be used for various purposes but there is a definite element of risk in converting this space to such commercial use without first having determined some specific tenant or some specific purpose to lease the converted area. It has been suggested that it be employed as a tea room or restaurant, but my experience convinces me that unless such a restaurant or tea room was operated by a person with an existing reputation and with an established following considerable difficulty would be experienced in pioneering such a venture in that particular location.

I drove around the neighborhood after I visited the hotel to more or less familiarize myself with its environment. I would say that the clientele of the Granada Hotel is rather substantial, respectable class of people.

From the structure of the hotel I would say that they are people of moderate means and use their kitchen for cooking purposes rather extensively. I think the other buildings in the neighborhood are the same type. Whether that particular neighborhood would yield a large or smaller volume of that type of business, I am not prepared to say. I would personally regard a restaurant investment in that location as a hazardous enterprise.

If I were in the restaurant business I would not be willing to lease the space in this building for a restaurant. Very few restaurants in hotels where the service is limited to one meal a day, dinner, when your house population is most available, have proven successful.

The Windemere West is an old building. The dining room has been operated by the regular catering department of the hotel for a number of years at a constant loss of approximately \$3,600 to \$5,000 annually despite occupancy in the hotel of from 75% to a present capacity of 90% over the years. The building is a hotel of some 200 units only five of which are equipped with kitchen facilities.



ties. It would appear to be a logical place for the development of a profitable food business. The restaurant, as I have described it has been unsuccessful. We attempted to lease it and we did lease it last fall to a woman who had operated a very succesful tea room known as the "Green Shutter Tea Room" in the vicinity of Chicago University. She had an established business of six or seven years duration in close contact with the faculty and student body of the University. We brought her into the Windemere West dining room thinking that her patronage would follow her. Eight per cent of her gross sales were to be paid as rental. She has paid her rent on that basis at a considerable sacrifice to herself up until the first of July and her working capital was gradually extinguished, and since that time she has been operating the restaurant on monies supplied by the hotel to meet the direct expenses with no profit or income to herself and the hotel has realized nothing from the operation of that restaurant since July 1st.

I am led to the conclusion that certain types of locations, such as ours, which have no access from the street—it is off the beaten path of pedestrian traffic and shops, neighborhood gathering points—are fundamentally unsound.

We have to maintain the dining room purely as a service to the residents of Windemere West. We are quite fortunate in breaking even through the contribution of this woman's services, trying to hold onto her lease, the waiving of any rental, and the counsel and advice and assistance from the catering department of the Windemere East.

I think the location of the Granada is a shade worse than the Windemere West from the standpoint of pedestrian traffic and as a center for neighborhood assembly. The successful operation of a restaurant is contingent primarily upon good food and the reputation of the individual for dispensing good food. The residential hotels have notoriously failed to establish a reputation in that field during the last few years.

I examined the ballroom space and the kitchen in the rear. At present time there is no kitchen. It might be described as a serving pantry. There is a small type of gas range in which you might prepare coffee, tea and possibly keep a roast warm, and there is a sink, some storage cabinets for silver, linen and china. It would have to be considerably amplified to do any kind of restaurant or tea room business. It would involve some structural changes.

The basement kitchens are not impractical. I would say they would have to have a closer approach than a dummy waiter—possibly a stairway, or something of that sort. At the Chicago Beach our kitchen was a converted billiard and bowling alley. I am familiar with the City ordinances relating to the special ventilation and lighting required and you would have to provide adequate ventilation to the roof of the building with fusible links on fire dampers in order to comply with the ordinance. We have just installed one in a drug store in Windemere East which does a food business of around \$2,400 to \$3,000 a month with an average check of about 25¢ per person. There are a considerable number of people served at each meal. But it cost us approximately \$1053 for the installation of the ventilating fan and the shaft to the roof out of that particular space.

If we were to utilize the ballroom area completely 837 and expected to serve the capacity of the room at any ordinary meal, I assume that the seating arrangement would accommodate approximately 200 to 250 persons. It would take quite a bit of equipment to service that. I imagine any operator in there would not attempt to operate on that scale. They would probably seek to reduce the area materially, either through the use of partitions or some general revamping of the room itself.

The nature of the equipment would be determined to a considerable extent on the type of restaurant you were going to operate and on who was going to operate it. The room itself does not lend itself, in my judgment, to a tea room service. The entire decorating effect of the room would have to be altered materially. Today it is a formal type of function room, which, if the decorations were left undisturbed, would have to be used as a formal dining room—which would be wholly out of place for that particular building, the location and the opportunity for patronage. Considerable investment would be involved in revamping the room to create the atmosphere of intimacy and informality which seems to be part of the popular price type of dining room which that would have to be in order to obtain any volume of business. The room is equipped with a type of chair which could be converted. I assume they have tables. I haven't investigated that point because the manager informed me they were already doing a small catering business to neighborhood civic and social organizations.

Excluding refrigeration, a kitchen in that location with a battery of two ranges, a broiler, deep fat frier, stock 838 pots, would cost about \$1,200 or \$1,500 for your ordinary mechanical equipment. Refrigeration and other equipment could easily increase your cost to \$3,000 or \$4,000 before you get up to the room itself. Ventilation in that building might be a very important item. I cannot answer as to that because I didn't go into it thoroughly. There is an exhaust system of ventilation in the ballroom proper but under the City ordinance general ventilating systems cannot be employed to exhaust the grease-laden fumes from ranges and other cooking areas.

It is very difficult to estimate without a specific plan what it would cost to change the room itself. The lighting scheme and installation of a more typical tea room or restaurant style of decoration on the walls is difficult to estimate without a specific plan but our experience is that it would require a substantial sum of money.

There is no question about the solarium and writing room being ideal for some such usage as a haberdashery, antique shop or millinery shop providing you can seek out just the right tenant. My judgment would be that any investment in the alteration of that space before the tenant has been identified, located and a deal arranged would be hazardous. As a business location, that property does not appeal to me for any general use but it is a known 839 fact that established merchants and people who are already engaged in business and who have a patronage and a following can set up a shop almost anywhere and do business.

When I was at the Chicago Beach Hotel there was a beauty shop on the mezzanine floor highly inaccessible, and it was a definite failure. The tenant was in arrears constantly in rent and we had to force them to vacate. Their inability to maintain suitable standards began to react unfavorably on the hotel.

We were successful in obtaining three young women who were the active figures in a neighborhood beauty shop in a street location, and when they came in they brought their trade right with them. The hotel and the location were immaterial: They could have gone into an attic, into a stable, I think. We converted a beauty shop which had been a distinct failure, and a definite handicap to the hotel, into a very successful item, yielding an average rental of from \$150 to \$175 per month, whereas before we were unable to get even \$50 or \$75 a month.

But I don't think the space had anything to do with the success of that department. It was the fact that we were able by good fortune to get three young women who had their own established business and could bring it with them. If such a thing could be done at the Granada, fine. But to prepare that space in a general way without having in mind any certain business or any certain business person, would not be advantageous. I can see where the property could be remodeled if you had someone standing there waiting to take possession of it but any investment prior to the identification of such a tenant would be 840 a pretty risky thing. If you can move a merchant, or a restaurateur, or a shopkeeper, or a dressmaker, or a beauty shop, which is a going concern, into that location, such an enterprise would continue to be a going concern, regardless of the location. The environment is nice.

You are highly restricted in the types of business that can be introduced in that area. The manager told me there were some restrictions as to street openings for certain types of business.

You cannot put every kind of business into a hotel of that character. You are limited in the class and respectability of the type of shop. While the rents are not very high, the appearance, manner and dress of the people that I saw in the lobby were those of conservative, respectable people who would be disturbed by an enterprise that would be a little bit off-color,—too much noise, too cheap an appearance, too flagrant in any respect.

A person engaged in the restaurant business there would undoubtedly try to develop as domestic a type of food service as possible. There would be no frills or elaborate service. They could not afford it, nor would the price at which the meal could be sold permit it.

While I say that it is a one-meal business, there would be opportunities, perhaps, for group luncheons. They have already been able to secure the Lakeview Women's Club for a series of meetings and there are probably other 841 opportunities existing for the promotion of that.

But it would all be contingent upon the individual reputation of the person engaged in the operation and that, I think, would be a much more vital factor than whether the Granada Hotel opened a tea room or not. The mere opening of a tea room by a hotel means nothing to the public and if they should undertake it without any previous experience or reputation in the field, it would be a long, painful process developing patronage.



I think it would be a very hazardous thing to put the amount of money required into that. If somebody was adventurous enough to do it, I don't know how quickly they could amortize it. I cannot see any possible, substantial return on operations there. Like in many hotels, if the equipment is already in and it was just rusting and going to pieces, somebody might utilize it.

*Cross-Examination by Mr. Rosenstone.*

I came to Chicago in 1925 and was away about a year as manager of the Coronado Hotel in St. Louis. I have been operating the Windemere East and West since October 1, 1936. I have not been engaged in real estate business in Chicago and have not acted as broker or agent for the renting of properties in Chicago for restaurant purposes, except the Windemere West—I negotiated that.

It is not necessarily true that most of the larger hotels, when they attempt to run restaurants themselves, 842 operate at a loss. Some of the hotels in the loop are operating at a profit. It depends to some degree on your bookkeeping system. As the Empire Room at the Palmer House, if the music expense is charged directly to the dining room it is undoubtedly a hurdle for the dining room to leap.

I know the Terrace Gardens have been unsuccessful. I cannot give you an answer on the success of the dining rooms in the Drake and Blackstone hotels. It is not generally so that restaurants are operated for accommodation and not for profit.

I have been over the section of Chicago where the Granada is located, between Clark and Orchard streets and Belmont and Wrightwood a number of times but I cannot say that I am expert on it. I made a survey of that district only in connection with that brief visit yesterday and was there about three hours. I drove around the neighborhood. One in my business has to consider those factors in forming an opinion. I would say that the majority of the apartment hotels in that district, from external investigation, have no restaurants whatsoever. There are a number of restaurants not connected with hotels along Clark street principally.

Clark street is the only business district in that section. Fullerton has some little business around it.

The solarium and writing room in the Granada could be utilized for commercial purposes with the qualifications

that I made. That is that the right type of person and a going enterprise. I would call the Granada an isolated 843 location for business. There is nothing on the outside of the building, nothing in the nature of the traffic by the hotel, to indicate a business location, and the public is particularly blind about a lot of simple things. They will walk through an open door rather than push a closed door, although the effort might not be a very important one. Only thing that comes to my mind for that location would be some woman who was probably selling dresses and had a little following and by dint of her personal acquaintances and telephoning, and so on, such a place might provide a suitable background for that business. It is true that many businesses of that kind are carried on throughout Chicago in apartments and places that have no direct access from the street. Its success is due to the person who carries on the business. That is one of the greatest problems involved—to secure your tenant and then model your space for that.

I was informed yesterday that the Lakeview Women's Club had been using the solarium for many years in cooking or serving their luncheons or meals in that kitchenette during that period. I can see where it is physically possible but it is not efficient. If you had to employ labor for that purpose the present equipment is inadequate. Most leases today are on a percentage basis with a minimum guarantee. The rate varies from 6% to 8%. It may run

844 higher in the loop where there are concentrations of population. That is a matter of agreement between the parties. I will say that operating a restaurant in the Windemere West was comparable to running one in the Granada. We have an area that we think is about as densely populated as that around the Granada. There are no apartment buildings to the south but there are to the east. We are a block and a half to the Illinois Central tracks and two blocks to the lake. There is quite a dense population adjoining our building to the north, along Cornell avenue and Hyde Park Boulevard.

I don't think the concentration of population is quite as great in the Granada as in our particular neighborhood. If I was the owner of the Granada and needed money to keep going it would certainly be a problem as to whether the solarium and writing room and ballroom should be kept vacant as they are now. I think I would endeavor to make some use of that space to bring in some money.

Thereupon there was copied into the record the following portions of the zoning ordinance of the City of Chicago with amendments and corrections to April 1, 1936.

**"Section 4. Residence Districts.**

**"Section 4. Residence Districts.** (a) In a Residence district no building or premises shall be used nor shall a building be erected, altered, or enlarged which is arranged, intended, or designed to be used for an A, C, or M use 845 as defined hereinafter. In a Residence district no building or premises shall be used nor shall any building be erected, altered, or enlarged, which is arranged, intended or designed to be used except for R uses or special uses exclusively as hereinafter provided.

**"(b)** For the purposes of this ordinance, R uses are hereby defined as uses designed for and permitted in Residence districts and conforming to the provisions relating to such districts; and all R uses are classified as R1, R2, R3, or R4 uses as follows:

**"R 1 Use—**An R1 use shall include every use as a dwelling house.

**"R 2 Use—**An R2 use shall include every use as golf or tennis grounds or similar use, church, convent, parish house, public recreation building, community center building, music school, university, public school, juvenile dancing school or a private or boarding school or college unless such private or boarding school or college is operated so as to bring it within the definition of a C use.

**"R 3 Use—**An R3 use shall include every use as a public park, public playground, or railway passenger station.

**"R 4 Use—**An R4 use shall include every use as a tree or plant nursery, farm, truck garden, greenhouse (unless such greenhouse is operated as a retail business), and a railway right of way not including yard tracks or industrial tracks."

**"Section 6. Apartment Districts.**

**"Section 6. Apartment Districts.** (a) In an Apartment district no building or premises shall be used nor shall a building be erected, altered, or enlarged which is arranged, intended, or designed to be used for a C or M 846 use as defined hereinafter. In an Apartment district no building or premises shall be used nor shall any building be erected, altered, or enlarged which is arranged, intended, or designed to be used except for R or A uses or special uses exclusively as hereinafter provided.

**"(b)** For the purposes of this ordinance, A uses are hereby defined as uses other than R uses, designed for and permitted in Apartment districts and conforming to the provisions relating to such districts; and all A uses are classified as A1, A2, or A3 uses as follows:

**"A1 Use—**An A1 use shall include every use as an apartment house.

"A2 Use—An A2 use shall include every use as a boarding house, lodging house, or a hotel which is maintained within the limitations in Apartment districts imposed thereon by this ordinance.

"A3 Use—An A3 use shall include every use as a public library, public museum, public art gallery, hospital or sanitarium, and eleemosynary institution except as otherwise classified, or a private club excepting a club the chief activity of which is a service customarily carried on as a business.

"Section 7. Auxiliary Uses in Residence or Apartment Districts.

"Section 7. Auxiliary Uses in Residence or Apartment Districts. (a) Auxiliary uses which do not alter the character of the premises in respect to their use for residential purposes shall be permitted in Residence and Apartment districts. Auxiliary uses shall include the following, but the enumeration of such cases shall not be deemed to prevent proper auxiliary uses that are not referred to:

847 "Signs not over twelve square feet in area advertising the premises for sale or for rent which are located (if space occupied by building does not prevent) not nearer to adjoining premises than 8 feet or nearer to a street line than the building line established by this ordinance;

"The office of a surgeon, physician or dentist, clergyman, lawyer, artist or other professional person, located in the dwelling or apartment used as the private residence of such person;

"Customary home occupation located in a dwelling, studio, or apartment and carried on only by the members of the household of the person occupying such dwelling, studio, or apartment as his private residence, provided no window or other display or sign is used to advertise such occupation other than a window card not greater than 1 square foot in size;

"The renting of one or more rooms or the providing of table board in a dwelling or apartment occupied as a private residence, provided no window or other display or sign is used to advertise such use;

"A public dining room or restaurant located in a hotel, provided that the public entrance to such dining room or restaurant is from the lobby of the hotel, and further provided that no window or other display or sign is used to advertise such use;

"Such facilities or retail shops as are required for the



~~operation of a hotel or apartment house, or for the use or entertainment of guests or tenants of the hotel or apartment house, when conducted and entered only from within the building; provided no street window or other exterior display or other exterior sign is used to advertise~~

848 such use; and further provided that in an apartment district which is also in a 4th or 5th volume district, at any time after May 15, 1940, but not previously (and no construction shall be given to the following language which would permit the uses therein named or any of them before the expiration of said period), an auxiliary use shall be deemed to include a retail shop on the ground floor of an apartment house or hotel (which apartment house or hotel is not less in height than 120 feet), such shop having a store front with show windows on and an entrance from a street, with such signs only as are on the glass of said window or entrance door; provided, however, that no such retail shop, such store front or entrance, or such sign shall be used for any purpose or business (1) which is not suitable to the neighborhood and to the main occupancy of said apartment house or hotel, (2) which involves the trucking of material through the abutting or adjacent streets or alleys in sufficient quantities to produce undue congestion in such streets or alleys or to interfere with the usual functioning of those streets or alleys, or (3) which is of such character as an automobile or automobile tire or accessory business, or heavy machinery display or sales room, garage, meat market, bakery, grocery store, hardware store, ice cream parlor, soda water fountain, gasoline filling station, street front lunch room or cafeteria, undertaking establishment, laundry, amusement place, or any other use of an objectionable character; and the specific enumeration above of certain uses shall not be held to exclude other uses which are unsuited to the neighborhood although not specifically enumerated."

849 An ordinance was passed March 27, 1935, amending Section 7 by deleting that portion of Section 7 which is lined out. There was also received in evidence the volume maps and the use maps which are part of said ordinance.

OSCAR W. DAUBER was called as a witness on behalf of City National Bank and being duly sworn, testified:

*Direct Examination by Mr. O'Brien.*

I live in Chicago at 7658 Rogers Avenue and I am a Consulting Engineer—Mechanical and Electrical.

As a part of my work I have had occasion to design and install heating plants and electric equipment and like items. I have performed service of that type on the Randolph Hotel, which is now the Bismarck Hotel, the Metropolitan Building and Palace Theatre, the Windermere Hotel, the United Masonic Temple Building, Chicago Theatre, Uptown Theatre, Detroit Leland Hotel, Washington Press Club Building, Paramount Theatre and office building in New York, Paramount Theatre and office building in Brooklyn, Ambassador Theatre and office building in St. Louis, Michigan Theatre and office building in Detroit. I am also Consultant with the Highway Department, State of Illinois.

From 1907 until last December I was the Engineer in charge of all work for C. W. & George L. Rapp, Inc. Since that time I have done and am doing work for Shaw, Naess & Murphy, C. W. & George L. Rapp, Inc., Pereira & Pereira, Ivor Viehe-Ness. I have never done any work for you or City National Bank.

850 I have brought in this morning a report concerning heat and refrigeration and water service by the Granada Hotel to the Arlington made at your request. Mr. Charles Murphy recommended you to me. Prior to making my estimate I had the records handed to me by City National Bank showing all of the material cost figures, for boiler repair, current, electric current, and the water, and repairs and maintenance. I also had copies of reports by Mr. Lewis, Mr. Schott and Mr. Brooke which indicated the cost of the original installation of the plant. I assumed their figures as to the original price of the equipment to be correct. I was furnished with data through Mr. Brooke as to the actual square foot of radiation in the Granada, the Arlington and the Lincoln Park Manor. I made a visual inspection of the machine room and boiler room at Granada and the mechanical equipment, consisting of refrigeration equipment, water treatment, water pumping and heating. It was necessary for me to know the actual capacities of the various elements and to determine about the number

of hours it would operate. I talked with the Engineer and we discussed the operation and necessary repairs that were made from time to time and the condition of the equipment, and looked it all over in his company.

In arriving at the operating hours of this equipment I used my judgment based on past experience and the information given by the Engineer. Based on that information, I prepared and brought in here the report.

Document marked City National's Exhibit W for identification is my original report.

851 Thereupon, CITY NATIONAL'S EXHIBIT W was admitted in evidence.

I read a copy of Mr. Schott's report that was furnished me. In my report, as to repairs and maintenance, I took what was shown from the Schott report and figured the average for a four-year period from those records. I think from the Schott report he provides for interest on the initial cost of installation at the rate of 5%. I figured it at 6%. I noticed that Schott's report figures amortization over a period of fifteen years at 4.3 per cent. The life of the plant is at least twenty years, and with care it can be extended much longer. In figuring amortization I, therefore, took it at three per cent for a twenty year period. I think that the figure 5.7 per cent in Schott's report for maintenance and supplies is excessive. As Schott's report includes specific items and charges for maintenance and repairs I think the figure of 5.7 per cent is an excessive repetition of the specific figures that were included in the making up of the cost.

In my report, I didn't figure any percentage for maintenance, repairs and supplies over and above the actual charges for those items over the four-year period. I allocated what I thought would be the amount of repairs and maintenance and I didn't exceed the amount that I took for the average for the four years from the records. I have no maintenance item in my report to compare with the 5.7 per cent charge in Schott's report.

852 After computing the operating costs of the Granada of furnishing heat, refrigeration, hot and cold water I added to those costs six per cent on the \$44,400 original investment. I determined the proportionate share of the Arlington of the three per cent for amortization. The proportionate share of the Arlington of the 2½% for insurance and taxes and the 2½% in relation to the original cost of installation. Having added those items and the operating charges, together, I allowed in addi-



tion a profit of ten per cent which, in my opinion, is a reasonable profit to be derived for the furnishing of services by the Granada to Arlington.

Profits to the Granada derived from furnishing these services to Arlington not reflected expressly in my report are profits due to the fact that Granada's own electric current and own labor used in producing those services for itself are less when it produces them in this mutual arrangement rather than just individual to itself.

If Granada were not servicing Arlington it would still have the labor payroll to operate this plant. I didn't make a calculation of the increased cost to the Granada of electric power in event it were not servicing Arlington. I just turned it in my mind and realized that there was a profit there. In arriving at the benefit that portion which would be taken off of their bill, which is now used in producing the service for the Arlington, naturally would be taken off the lowest bracket of the rate. Therefore,

Granada's average cost would be higher than the 853 average now, which is .016, and the difference would represent the value of this benefit that Granada now enjoys.

Schott's report lists under "Operating Charges" the following items for maintenance and repairs, namely: \$600 under refrigeration expense; a like amount under heating expense; and \$100 under water-house service expense; making a total of \$1,300. The actual annual charge for the four-year period averages \$630 from the records. In apportioning the cost of operating charges and other items between the three buildings I used the ratio of the actual radiation installed, square feet of heating surface. For refrigeration I used the ratio of the ice boxes installed. For the hot water I used the ratio of hot water outlets and for the cold water I used the ratio of cold water outlets. I didn't have the bills from the bureau of water in respect to the volume of water consumed annually. They paid an annual amount for water consumed in each year and I took average of that, the average cost and divided it by the rate and got the number of cubic feet which they bought for that money for the average of the four years.

*Cross-Examination by Mr. Rosenstone.*

I got the figures on the first page of my report—boiler plant \$19,000, refrigeration plant \$16,230, water pumps, heaters, tanks, etc., \$9,230 from the reports and



I assumed they were correct so used those same figures. My recollection is that they are the same figures Mr. Schott used.

- 854 I made no inspection of the plant for the purpose of ascertaining those figures. I made an inspection of the boiler room in the Granada but didn't measure how many square feet there are in that room and don't know. I didn't make any estimate of cost of the construction of the room.

In making my final recapitulation, I didn't take into consideration the cost of building that room. I don't consider that a necessary element in making my determination because the room had to be built there for Granada's own plant and there is very excessive room for the equipment that is there.

I have to take into consideration the original cost of the boiler, water pumps and refrigeration plant in order to proportion the charge. I don't think the same rule applies to the original cost of the room. In my judgment ten per cent profit to Granada should be sufficient for furnishing these services. There are other profits in addition to that ten per cent. I would be able to buy my service cheaper along with the other fellows'. I don't think the fact that Granada does not control the other two hotels makes any difference in making the report. I understand that either the Arlington or the other hotel could quit any time they wanted to. Anybody could quit unless they had an ironbound contract. I took into consideration the hazard the Granada is running in operating such a large plant,—the hazard of their inability to control the other hotels—and I still say that ten percent is a sufficient profit to the investing hotel.

As Consulting Engineer I would advise anyone to make an investment in a plant of this kind on the ten per cent net profit basis. Considering that after finding out just how much additional benefit he is going to have ten per cent would bring it up to a good rate. Supposing that there wasn't a contract, I might still advise a client of mine to make an investment of that kind on a ten per cent basis. I would consider that sound business.

I didn't take into consideration the cost of construction of the boiler room in determining my service charge. I do not think that is a necessary element like the cost of the installation of the pumps, boilers, refrigeration and other accessories because it is necessary for his own plant, for his own use.

I obtained the figure \$2,460 per annum for labor cost from the records I received from City National. I believe that is about the same as Schott's figure. I would have to refer to his report. I don't know whether the allocation of expenses of the various operations at fifty per cent for refrigeration, forty per cent for heating and ten per cent for water service corresponds to Schott's figures.

The refrigeration requires 365 days attendance. Two men are necessary to operate the refrigeration. It does not necessarily require all of their time. They have to be there twenty-four hours a day and I presume they split it twelve hours each. They wouldn't have to actually 856 work, but they would have to be in attendance to see that it was operating and in order to get the temperature when it is necessary to shut down for a period of time—which he would do. The rest of the time he would be looking after the heating plant and water plant.

During June, July, August and September it would require no services as far as the heating plant is concerned. It is problematical as to how much of the time would have to be devoted to heating by these two men the other months of the year. Some days they might have to devote quite a bit more than other days. On an average it would probably be about two-thirds of the time.

The time devoted to the refrigeration plant would be comparatively small in relation to the other two operations. I was not told to make a large charge against the refrigerating plant in my labor expense. When this report was ordered I was told to find out what the reasonable proportionate charge of the cost would be for the three properties.

"Mr. O'Brien: Tell the Court just what I told you about that, Mr. Dauber.

"The Witness: You said you were giving me these reports and the information from the City National and you wanted me to deliver an unbiased report and set down just what the facts would be—what would be developed in arriving at the operating costs." (Witness resuming)  
Mr. O'Brien said nothing to me about boosting up the refrigerating plant. I didn't make an inspection of the other two hotels.

In determining the number of ice boxes, the plumbing outlets, both hot and cold water, I took the records 857 of the number of rooms and baths and figured out how many outlets there would be in the total, in each property.

I didn't examine blueprints of these three buildings, I only had a floor plan of the basement in the Granada. The information as to the number of outlets in the Arlington and Lincoln Park Manor was on the record which I received from the City National. City National's Exhibit 7.

On page 5 of my report under cost of heating I got 112 gallons of fuel oil by taking from the records the total amount paid for oil, figuring how many gallons were purchased and figuring how many gallons were required to heat the hot water. I totalled that, deducted it from the total and that makes 112,100 gallons which would be used in the heating. That 112,100 gallons would be what they purchased in that year. It is the average from 1933 to 1936, inclusive.

The price of .0475 is the market price which is still about that—that is .0475, No. 6 oil. I show how I arrive at 7230 kilowatt hours at .016 on page 4—with the first grouping there, heating. I take the size of the motor, the number of hours that it runs, the kilowatts it would consume times the number of days it would run—that gives you the total consumption of that motor. The number of days the motor would run is estimated and from the advice of the Engineer who operates it and from regular practice. I don't believe they have a record of how many days they run the motor. It is an 858 estimated figure and that applies to both oil burner heaters, the oil pump and the vacuum pump motor. There is not a record at the hotel that discloses how much electricity was used during the years 1933, 1934, 1935, and 1936 for those motors. There is a record as to how much was consumed in those years by the entire property.

There would be three meters in the Granada. I didn't examine them. I didn't examine the electric light bills or receipts. I didn't examine vouchers in order to ascertain how much had actually been paid for electric light and power for Granada. I took this record which I received.

It is necessary to have one meter for power, one for light and one for emergency. There is no current passing through the meter for light for any purpose other than light in Granada Hotel, which includes lights for guests as well as for the hotel in general. There is a meter for power which records the electricity so used just for the Granada. I expect there are meters in the other two hotels. I didn't see them. They must be there.



The three buildings appear to be about the same type of construction. I don't know whether they were built about the same time. When I made my report I had before me Schott's report. It was not my purpose to make a report that would show a lesser amount to be charged against the Arlington than he showed. I left out the charge of boiler room space in Granada as a basis 859 for arriving at my figures.

I figured interest at six per cent on the cost of the installation instead of five per cent because I think at the time that hotel was built ten, twelve or perhaps fifteen years ago, they must have paid six per cent for their money at that time.

On page 5 the last item of each computation was where I arrived at the cost of each service. Under refrigeration I allowed three per cent amortization on \$16,280, under hot water three per cent on \$4,230 and three per cent on \$5,000, making a total of \$44,410 for all equipment. Three per cent is the accepted figure for amortizing in twenty years. On a fifteen year amortization I would use the 4.3 used in the other report. My experience in determining and figuring costs of this nature is figuring costs at all times, checking contractors' estimates for installation, checking the operating engineers for their costs after we make installations from time to time and checking costs for operating at all times. I don't recall a parallel situation like this where I attempted to allocate the expenses.

In my usual work my cost of figuring does not pertain to new constructions, new installation or alteration. I just made a report for a laundry in which the purpose was to determine whether or not it would be advantageous for them to buy or make their own current, where we had to allocate the different charges for the different departments in a similar fashion.

Determining how many more years this equipment will probably last is not so much guess as it is comparing 860 it with the length of life of similar equipment. With normal upkeep and normal care that equipment would normally last twenty years—with good care, it might go forty years. If the property has been allowed to depreciate because of lack of attention, it would be obsolete, or at least unusable in a much shorter time than if it were properly taken care of.

In determining what depreciation should be used in my report I considered that the equipment was in possibly



twelve to fifteen years and it is in good condition yet. The only place I found it needed care and attention was the pump. It was dripping and leaky and it needed packing, that is all. I didn't see any evidence of recent repairs. The operator told me he had to replace a shaft in the two prime pumps. One pump was operating, the other was in operating order but not operating.

*Redirect Examination by Mr. O'Brien.*

The 29,780 kilowatt hours at the bottom of page 4 of my report for elevator, laundry, etc., is the residue I arrived at after deducting for the four particular services and the amount which necessarily would have been consumed by all of these various motors that serve only the building and not these plants. It is possible to make an accurate scientific check of the power these elevators consume and such test might disclose a greater or lesser number of kilowatt hours.

*Recross Examination by Mr. Rosenstone.*

My allocation of the electric current to these various operations are estimated on the basis of taking actual motor size and the estimated hours and days that they would run. There is no record as to what days and hours motors ran but we know that the ice machine has to run 365 days. There is no record whatsoever as to how many hours the various motors actually operate.

Hearing October 8, 1937, before the Honorable John P. Barnes.

Met pursuant to adjournment.

Present:

Mr. Woods,  
Mr. Rosenstone,  
Mr. O'Brien.

FREDERICK JOHN MACKIE, called as a witness by City National Bank and Trust Company and being duly sworn, testified:

*Direct Examination by Mr. O'Brien.*

I live at 737 Hinman Avenue, Evanston, and am a research analyst with R. Cooper, Jr., Inc. which sells General Electric individual refrigerators. It sells a four-foot box.

I have made an analysis of operating costs in quite a number of buildings on that box. The average cost per month per box of operating units of that type depends upon the electric rate. Taking a three-cent rate which is the household rate in Chicago and it would approximate sixty cents a month on the basis of consumption of an average of 20 kilowatts—kilowatt hours over a 12-month period.

Larger buildings having Commonwealth Edison Company C-1 rate, which is the first 6,000 kilowatt hours, is at 2.6 cents; the next, 24,000 kilowatt hours is at 1.1 862 cents; and the next 70,000 kilowatt hours is at .9 of a cent. Plus a kilowatt demand charge of \$2.00 per kilowatt of maximum demand.

Assuming our boxes operated in a 75-flat they would be on the C-1 rate. By putting in 75 General Electric refrigerators we would be charged at the 1.1% rate, plus \$2.00 for the kilowatt demand.

With the analysis I have here on 422 refrigerators placed in five buildings, the average consumption over a year's period per refrigerator was 21.8 kilowatt hours and an increase in the kilowatt demand was 28 watts per machine. On that basis that would be a cost of 24 cents. But there is one building in here, where they get down on a rate of .45 of a cent; so I should say that a conservative figure would be not in excess of 30 cents per month per refrigerator.

I have seen the Arlington building. I know they had a system in there. In fact, I tried to make an operating cost analysis at one time, but we could not gain permission.

I checked last month's bills at the Edison Company for the Arlington property for the month between 9-3-36 and 10-5-36. Last year the light meter consumption, which is number 17,373, was 64,016 kilowatt hours and the kilowatt demand was 24.5. If you subtract last year's period from

this year's period you get a difference of 2,012 kilowatt hours and 5 kilowatt increase in the demand. If you figured kilowatt hours at 1.1 cent less 10 percent discount, and the kilowatt increase—you will get a charge or an increase in the cost of approximately \$32.13 for one month's 86½ operation. That averages approximately 50 cents per box. Of course, it must be remembered that our boxes in there are new and naturally they consume more current the first month, because they go in at room temperature and heat has to be extracted out of the insulation. It would be possible to get the charge per month per box more than that per month by setting the machine, but if you did you would probably freeze the food and naturally the tenants would not want that. In normal operation the average would be as stated.

I analyzed the total maintenance on 550 of the oldest General Electric Refrigerators we have in the City of Chicago, in the larger buildings. The oldest installation in a large building is 4200 Hazel Avenue, 65 General Electric Refrigerators installed in there. They were installed April 23, 1928 and the analysis was up to 1937, which is a period of nine years. During that time the cost of unit replacement was \$1,047.85; cost of service was \$179.48; the total cost, including unit replacement and service was \$1,227.33, which breaks down to the cost per year of \$136 on 65 machines.

That is the worst installation we have in the City of Chicago. They would not allow us to cut cabinets, and that is a monitor type of refrigerator and we had to put it up on the top; consequently, the operating was a good deal longer and you have higher temperature motors, causing excess of burning out of the motors.

864 Where we do not have these abnormal conditions but normal conditions, the cost per year per machine on 500 machines over a period of seven years and nine months is \$1.22 per machine per year.

*Cross-Examination by Mr. Rosenstone.*

I am not a salesman with Cooper & Co. Business with Cooper & Co. is distributing General Electric products, including refrigerators. General Electric only builds the individual electric refrigerator and markets it and super-vises it. They only sell these separate unit refrigerators.

J. ROY HUBBART, called as a witness by City National and being duly sworn, testified:

*Direct Examination by Mr. O'Brien.*

I have found two of the original heating and refrigeration agreements existing between the three old hotel properties here. Instruments marked City National Exhibits X and Y are those two agreements. Y is the agreement between the Mateer Hotels, Inc. and Lincoln Park Manor Building Corporation, which we found in the files of the Lincoln Park Manor trust. X, which is the agreement between Granada Hotel Corporation and the Mateer Hotels, Inc. we found in Mr. Albers' office, the receiver of Central Republic Trust Company. Mr. Albers sent it over late yesterday afternoon.

We have never been able to find the corresponding agreement on the Arlington property. I saw the agreement with the Arlington, which is similar to these instruments X and Y.

865. In looking through the files for various things in connection with the Arlington I came across that agreement and, as has been my habit with items that might be of use in my work in operating properties, I have often made copies. I made a copy of it at the time and have had it in my files ever since. The instrument marked City National's Exhibit Z for identification is that copy. I believe other copies were turned over to you and I believe Mr. Woods received a copy from our office.

I first met Mr. Woods on Wednesday, May 19.

The instrument marked City National's Exhibit A-1 for identification is the estimate I obtained from the General Heating Company, represented by Mr. Young on the cost of installing a heating plant in the Arlington Hotel. The estimate bears his genuine signature.

Individual electric refrigerators were installed in the Arlington property in December, 1935, and January, 1936, due to difficulties with the boxes that were in those particular apartments. Later, in August, 1937, the balance of the apartments having refrigeration were equipped with a total of 61 more. 76 boxes cost \$100 a piece and are three-foot and four-foot depending on the size of the apartment.

There are various operating bills incurred by City National Bank and Trust Company as Trustee, some of which,



I believe, are still unpaid. Those bills were set forth 866 in the report and account of City National, as Trustee, filed in this proceeding and were all incurred in and about the operation of the hotel premises and in each instance, represent the fair and reasonable charge for the item covered.

I have seen the instrument marked City National's Exhibit A-2 for identification before and have also seen the original, of which it is a copy. The original, I believe, was furnished us by Mr. Hall on or about the date it bears, which is January 5, 1934.

*Cross-Examination by Mr. Woods.*

I have never notified you or the court that there were any electric refrigerators in the Arlington Hotel. If you are referring to the ones that were in there since 1935, I think I mentioned them to you when I visited with you. I have no written record showing that the Trustee of the court had any information that I had installed electric refrigerators except when the individual units were installed your representative of the Granada property, Mr. Parker, was notified to shut the valves and discontinue the service. That was done by myself personally.

It is not a fact that I called Mr. Parker at 5:30 in the afternoon when I knew you were on the train and told him that I wanted to defrost some boxes. I didn't know you were going out of town. I notified Mr. Parker that he could shut off the current at that time which would give an opportunity for the boxes to defrost over night so that the new boxes could be put in service. I knew where 867 your office was and what your telephone was and how to reach you and I never notified you at any time that I wanted the service discontinued and I never notified you directly that I wanted the service discontinued.

Lincoln Park Manor Trust is a trust with the City National covering Lincoln Park Manor Hotel. I never went into the Trust completely. I have had nothing to do with the operation of that property.

There is also a trust in reference to the Arlington Hotel. I cannot say whether a trust consists in the equity in the property. I am not conversant with the trusts themselves. My business has been operation of the properties.

*Redirect Examination by Mr. O'Brien.*

It is set out in my report from this case that the Arlington was to install individual refrigerators in any event. The brine piping was giving us considerable trouble.

The coils and ice cube trays were very obsolete. I had wanted for a long time to put individual refrigerators in the Arlington. I had decided in my own mind but could take no action until after the property was reorganized. I had been of the opinion that a heating plant should be put in the Arlington. I have not received any direct orders

to do so, although I have planned to do such a thing. 868 Mr. Woods made a demand for \$1000 a month during the summer vacation and I wished to put in a heating plant at that time.

I have refrained from putting it in at your suggestion, pending the outcome of this proceeding. Mr. Woods has never talked with me, or with anyone else so far as I know, in an attempt to negotiate an agreement, looking to the continued use of the Granada heat and refrigeration.

The Arlington plan was put out long before the filing of proceedings here and provision was made for the installation of its own plants, both heating and refrigerating.

*Recross Examination by Mr. Woods.*

I never made any suggestion to you or to the court that there was any difficulty with any pipes in the Granada. The difficulty was in the Lincoln Park Manor and the Arlington and I presume there was some trouble in the Granada. It was the main piping. I mentioned to you that there was trouble with the pipes when I visited you on May 19. I didn't tell you that the whole plant was no good and should be taken out.

I told you the plant in many ways was obsolete as far as the pipes and boxes were concerned. My idea is not that nothing should be repaired or fixed up or that it should be allowed to wear out in order to get something new. That is not what we did at the Arlington. It is because with the individual electric boxes you get greater efficiency 869 at less cost. I didn't learn that from this cost expert but after many years of investigation and operation, both kinds of plants.

It was not necessary to upset the arrangements in the engine room because I notified Mr. Parker. He did not have to turn it off within several hours unless he wished, and you can shut down a plant in a very few hours without any difficulty.

EDWARD HALL, called as a witness by City National Bank and Trust Company of Chicago being sworn, testified:

*Direct Examination by Mr. O'Brien.*

I live in Chicago and am familiar with the Granada, Arlington and Lincoln Park Manor properties. In December, 1933, Chicago Title and Trust Company took possession of the Granada, as receiver, and I was agent in charge for the receiver.

Around that time I had conferences with Mr. Hertzman and others of City National relative to charges being made and to be made for heat, refrigeration and other services from Granada to Arlington. At the conclusion of those discussions an instrument was prepared of which City National's Exhibit A-2 for identification is a copy. The signatures appearing on the original which you hand me are those of Roger W. Walters, President, Granada Apartments, Inc.; George U. Nichols, Secretary of the same company; Edward Hall as President of the Warrliart Apartments Building Corporation; attested by Cecil Clark, its Secretary. Those are the genuine signatures 870 and handwritings of those persons.

The instrument was prepared by you at my suggestion, I think. That was on or about the date it bears, January 4, 1934. I procured the signatures from these various people. They were at that time officers of those various corporations.

Granada Hotel Corporation was the corporation which made the first mortgage bonds involved here. Mateer Hotels, Inc. was a sort of holding company for the operations of Fred Mateer, promoter of this group of buildings and one or two more in the neighborhood.

February 9, 1924 Granada had not been erected but the basement was there with the heating plant and refrigerating plant roofed over. The Arlington and Lincoln Park Manor were erected and in operation at that time.

I can identify the signatures appearing on City National's Exhibit X for identification, which is the agreement between the Granada Hotel Corporation and Mateer Hotels, Inc.

The first signature appearing is that of Charles B. Mateer, who is President, or was President of the Granada Hotel Corporation, attested by D. B. Hall, Secretary. Fred D. Mateer, President, signed on behalf of Mateer Hotels,



Inc., attested by P. R. Weidener, Secretary of Mateer Hotels, Inc.

At that time Mateer owned all the stock of both corporations. I can identify the signatures on City National's Exhibit Y for identification. They are those of George U. 871 Nichols, President of Lincoln Park Manor Building Corporation, attested by Fred D. Mateer, Secretary. On behalf of Mateer Hotels, Inc., Fred D. Mateer, President, and attested by R. R. Weidener, Secretary. I have never seen the agreement, Exhibits X and Y before, although I have some knowledge of their existence.

Thereupon, the documents marked CITY NATIONAL'S EXHIBITS X, Y and Z, respectively, for identification, were received in evidence.

There was thereupon offered in evidence City National's Exhibit A-2 for identification, which is an agreement between Granada Apartments, Inc. and Warren-Hart Apartments Building Corporation.

(Witness Resuming.) No one asked me to sign City National's Exhibit A-2 for identification. It was the consummation of a transaction that I, myself, arranged. I probably asked Cecil Clark to sign it. He was the Nominal Secretary and had no active part in the operation of the property.

There is an original which can be found and it undoubtedly has the seals of both corporations on it.

This document was followed by a conventional journal entry setting up its provisions and conclusions. An entry was made at the closing of the books on December 31, 1933.

Roger W. Walters was President of the Granada Apartments, Inc. He is a real estate man on the north side. He has been owner of the equity since the corporation was organized in 1928. At the time he signed City National's

Exhibit A-2 for identification I was Nominal President 872 of the Warren-Hart Apartments Building Corporation, which is the equity owner of the Arlington Building. I was operating both of the properties at that time on behalf of the Trustee of the Arlington and on behalf of the receiver of the Granada, who was Chicago Title and Trust Company. I was doing the actual work of operating. The receiver did not operate it at all. Chicago Title and Trust Company went into possession December, 1933. The bank had nothing to do with it until April of 1934. I drew \$50 a month for expenses and nothing else for operating, which is the sum I fixed in the beginning. I have been in there since December of 1931.



In addition to myself we had the Manager, aside from the Manager there were the lawyers. Aside from the lawyers and myself nobody did anything. That existed in reference to the Granada until the matter came into the Federal Court in May of 1937.

The Granada was in the State Court in the foreclosure proceeding at the time I signed this agreement. At that time the Chicago Title was operating the property through me.

During that portion of the year 1931 that I was in charge and 1932, we collected at the Granada from the Arlington, \$1,015 per month for heating, refrigeration, hot and cold water and elevator maintenance, which was sometimes more than the net amount of money left after bills had been paid at the Arlington; consequently, in 1933 the pressure about that situation increased and the consensus of opinion of a number of Bondholders 873 in the Arlington was that the Granada was milking the Arlington property. I cannot name the bondholders now.

There was evidence that the charge was too high. In 1930 the people in charge of the Granada more or less followed the contract executed between Barton and Granada Apartments, Inc., which provided for \$600 a month for six months of the year, and \$900 for the winter months of six months; but in 1931 the agent in charge of the property arbitrarily raised that to \$900 for the twelve months of the calendar year. That was the main basis for the contention that we were overcharging, and it was quite apparent on the face of it that it did not cost as much to service the building in the summer as it did in the winter. That contract is between a man named Barton, who had purchased the Arlington property in 1927, and the Granada Hotel Corporation. The contract is an exhibit here. So that this arrangement of \$600 a month for 1933 was simply an evening up measure and to avoid censure and also to avoid steps that might have discontinued service,—there was some talk about putting in a plant and building ice boxes. The Granada could not continue to lose the revenue; they needed it; even today they still need it.

Cody Trust Company had a very substantial investment in the Granada and also in the Arlington at one time. They parted with their interest in the Arlington and sold it to Barton in 1927. Later, they parted with their interest in the Lincoln Park Manor and sold it to

C. C. Campbell. Then Gehm, who owned the second mortgage, foreclosed and got the Lincoln Park Manor. In 1933, during the time the Title Company was receiver, Granada Hotel was the only property in which the Cody Trust Company had a continuing investment.

It was the Cody Trust Company which in the past had raised and varied these rates as they existed in 1924. In 1924 they were operating under the three-party agreement in evidence, and from time to time as Cody's disposed of the different properties they put in effect new agreements, always with the Granada getting heavier revenue.

Mr. O'Brien: "Here is the situation, your Honor. The contracts that were made call for the payment by these properties to the Mateer Hotels, Inc. of the annual operating costs and expenses, plus 15 per cent of the cost—not 15 per cent amortization or depreciation on the investment, but 15 per cent of the operating charge. That was the original arrangement and continued until these other two properties were sold off."

Mr. Woods: "Why certainly, Mr. Mateer was dealing with himself."

Mr. O'Brien: "All right."

Mr. Woods: "He had the Mateer Hotels Corporation, which was an operating company, and he owned the whole stock of all these hotels. He made an agreement with himself. What difference does it make what the terms were?"

(Witness resuming.) For a time Granada Hotels, Inc. charged the Arlington Hotels \$600 in the summer and \$900 in the winter. That was approximately the year 1930. From the books of the Granada Apartments, Inc., that arrangement started with the formation of that company early in 1926 and continued until the Trustee, Central Republic Trust Company, took possession in 1934. Then they opened their own set of books. The charges were this \$600 a month which we had agreed upon. That is the basis of this document here. I am speaking of the period prior to that agreement. It was afterwards raised to about \$900 by the agent of the Cody Trust Company. He was running the Granada Hotel. The \$900 a month was collected for the entire calendar year 1931 and the calendar year 1932. In 1933 we readjusted matters and collected \$600 for the entire service. We began that in January, 1933. Pending the consummation of the agree-

ment we charged the building with the full amount and collected each month \$600 and let the balance ride. That was written off at the end of the year by a journal entry.

The officers of Granada Apartments, Inc. represented the Granada, to a certain extent, in making the trade and they knew personally of this. They were Nichols and Walters. They were satisfied with that rent. I recommended that way as the solution of washing up the balance that had been made on the overcharge of the past.

I traded the contract on behalf of the Arlington. I 876 was in charge of that building as well. It was not in the hands of a receiver. No one else than myself tried to get as much money as he could for one side and as little money for the other side.

Mr. Woods: "I contend the document is fraudulent, your Honor."

The Court: "Well, it may be received."

Whereupon the memorandum of agreement made as of the 1st day of January, 1933, between Granada Apartments, Inc. and Warren-Hart Apartments Building Corporation, was received in evidence as CITY NATIONAL'S EXHIBIT A-2.

While I was trading this agreement I conferred with the Trustee, which was in possession of the Arlington property. It was before they took formal possession that this deal was started. They took possession on December 31 of 1933, but these acts had been committed before.

I recall the provision in City National's Exhibits X, Y and Z that the arrangement was not to be changed without the consent of the Trustee under the first mortgage. It was because of that provision that the Trustee sat in this conference. I presume the Trustee sat in this conference on behalf of the bondholders of the Arlington. The Trustee was the Central Republic Trust Company, later City National Bank and Trust Company.

877 Up until that time the Cody Trust Company, which controlled the stock of the Granada, was getting whatever price it fixed from the Manor and from the Arlington. That was prior to the first mortgage defaults. I don't remember any particular complaint from Mr. Hubbard that the money being paid by the Arlington to the Granada was too much. I don't remember Mr. Hubbard insisting that it was too much and that he would not pay it until later in 1933. We were trying to collect that money from the Arlington during 1933. Nobody re-

fused to pay it. Sometimes it was not there to be paid. We got \$600 per month from the Arlington. I cannot remember Mr. Hubbard insisting that we had been getting too much. I did not hear his testimony in this case.

Mr. Woods: "Mr. Hall, isn't it the fact that the Barton contract, dated in 1927, would have come to an end after six years, sometime in 1933, unless it was renewed; isn't that the fact?"

A. "Sir?"

Q. "Isn't that a fact? Read the question, please."

A. "Well, why they had all that—"

Q. "Wasn't that the reason, that they simply refused to make the payment during the year, they wanted to kill the contract?"

A. "No, it was not, Mr. Woods."

(Witness resuming.) I had other buildings along in 1933 and January, 1934, but those three buildings 873 were the only ones I set any specific price on. I was getting some money from other buildings. I had no buildings for the Central Republic. I had two buildings for the Massachusetts Trust Company of Worcester, Massachusetts. I didn't start getting money from the Central Republic Trust Company until 1934. February, 1934, is the first money I got from them. Central Republic Trust Company, after this contract was signed, simply continued the arrangement existing. They did not put me on the payroll or hire me, or anything else. They merely left things as they were when they stepped in. When I said that a reduction to \$600 was made to even up, I meant to adjust the complaints that had been made and the talk that was going on about an overcharge in the past; to sort of even up where there had been overcharging before, to avoid any comment, if possible. I did not know exactly how much it evened up because it would take quite a bit of auditing and going over the books and trying to straighten out a number of peculiar entries that had been made in the past. Frankly, we did not have the time or inclination to go into that at that time. It was largely a question of keeping the property going. There was very little money coming in to do this. You know what the conditions were in 1933.

I believe it a fact that Granada Apartments, Inc. was really organized by the Cody Trust Company and practically all properties were in their control as long as 879 they were operating. I am not familiar with whether the Warren-Hart Building Corporation was similarly



under the control of the Cody Trust Company or some other trust company, because that grew out of those trading transactions that took place there. Those trades did not stick—they all came back. They all brought some money into the pots. Lincoln Park Manor did not come back.

I remember when the fixture litigation of Pick was settled. Prior to the time of that settlement I had an appraisal and complete inventory made of the property in the Granada Hotel premises. It was made by the Chicago Seating Company. Their business is furniture and appraisals. Mr. Murphy, the head of the company, was out there, but an associate whose name I don't recall made the appraisal for the company. They furnished me a copy of that appraisal in writing, signed by them.

The document marked City National's Exhibit 3-A is the appraisal I ordered and received at that time, signed by W. J. Murphy and Gary Young on behalf of Chicago Seating Company.

I first became connected with the operation of the Granada Hotel premises December 1, 1931. Central Republic Trust Company, as Trustee, took possession of that property sometime in the month of March, 1934, I believe. Continuously since March, 1934, I was identified with the operation of this property. At no time during that period did the Granada Apartments, Inc., or Cody Trust 880 Company, or anybody else having any ownership in that hotel property, request that the lobby space be revamped, at least in part, for commercial purposes or for a dining room.

Early in 1934, Ingersoll, Wenstrand and others acquired ownership of the stock of the Granada Apartments, Inc. Wenstrand was familiar with the operation of this hotel property. He lived at the Lincoln Park Manor all that time. I never sought his consent or the consent of anyone to utilize the space in the Granada for commercial purposes and for dining room purposes. Personally, I did not think it was very profitable. I did not think it should be done and do not now.

I was familiar with the incinerator out there and with its condition at the time the Trustee in Bankruptcy was appointed here. I was at the premises some time each day. The incinerator was functioning and had been used. We had found it necessary to repair it from time to time and did so. We repaired it with our own help to save money.

It could have been repaired in the same way since the Trustee has entered into possession, although it was a job that we had discussed and had deferred until a convenient time financially to do it. It was a job that was necessary to do at some time. It could be repaired so that it would function and operate by the same means that were 881 employed before. If I owned the property, I don't think I would have spent \$500 at that time to fix it up. I haven't been known as being much of a spender.

I remember that \$8,500 provision that was in the receiver's certificate at the time it was drafted, in relation to rents, and that it was not for lawyers or lawyer's fees. It might have been with the thought of receiver's fees but not receiver's agent's fees, because the agent was bound by his \$50. We looked ahead to the time of reorganization. Frankly, I did not think very much about who was going to get the \$8,500. We simply reserved it so that we would have some money at the time of reorganization. At the time the Title Company surrendered possession to the Trustee, it had on hand a sum in excess of that amount, approximately \$10,000, cash and school warrants. We paid \$4,400 and some cents of that on receiver's certificates. About \$2,500 was paid over to the Central Republic for working capital. The Title Company had not been paid a dime in any fees up to the time of its discharge. I would say the gross collections at that period were in excess of \$300,000 for four years. I believe the Title Company was paid less than \$3,000. I believe their attorney, Mr. Gaughan, got \$300—it was quite reasonable. That just about used up the money. We didn't pay that \$4,000 in 882 taxes because the receiver's certificate had been made conditioned on the property remaining in receivership, and it was necessary to get the insurance company to agree to the assumption of the debt by the Trustee, so we had to pay something.

Cody went into receivership in December, 1933. According to my letter of June 4, 1937, to Mr. Woods, the Barton contract expired in July, 1933, and I believe that is correct. I told Mr. Woods that the provisions for payment under that contract had been modified and changed from time to time. Those modifications were never put in writing that I know of. The only agreement in writing that I know of is the Barton agreement and the agreement which I signed on January 5th of 1934. I don't know of any others—aside from the Mateer contracts in 1934.

The Granada Apartments, Inc., was operating the heating plant at the time I signed that contract in January, 1934. The Chicago Title and Trust Company was receiver at that time and I was operating the building for them. I don't believe the Granada Apartments, Inc., has had a great deal to do with the operation. They were always in trouble—with furniture or something.

*Cross-Examination by Mr. Woods.*

The Cody Trust Company had a great deal to do 883 with the operation. The money was never taken to the Cody Trust Company. The building had its own bank account and the money was kept at the bank at the corner of Clark and Diversy until the year 1932. Mr. Older was an employee of the Cody Trust Company and was put in charge of the properties, but the funds were never taken to the Cody Trust Company.

Mr. Wenstrand wasn't on the payroll of the Cody Trust Company but he was there. I had a desk for a couple of months at the Cody Trust Company in 1932, but spent all my time outside. The only properties that Cody had an interest in that I am connected with would be the Arlington and the Granada. I am receiver for a bond issue of theirs in Waukegan, but that cannot be on their behalf. I am the receiver thereof and as such am in full control.

I had accumulated \$13,000 over at the Central Republic Trust Company out of the rental receipts from the Granada in August, 1933. I presume I had been accumulating that money since I took over the property December 1, 1931. I did not turn the money over to the Chicago Title and Trust Company as receiver. We had considerable discretion about handling that at that time. I am not sure that the situation is that the Chicago Title and Trust Company did not do anything about the management of the property until after Cody Trust Company went into receivership.

884 I didn't go over to the Chicago Title and Trust Company to get a check for \$50 a month. I paid myself. I sent them a statement showing how much was left at the end of the month. They made no objection about that.

The arrangement for the Chicago Title and Trust Company to let this thing be handled by some other people was an arrangement that had been made with the Title Com-

pany by Mr. Hiram S. Cody, to give the property a chance to work out of its difficulties, particularly over this furniture situation. It is quite true that there wasn't any other reason for that receivership except to use it as a weapon in warfare with Pick. In 1934 the Chicago Title and Trust Company was directed to actually take possession because Mr. O'Brien, myself and the Trustee thought that the best move would be to make a conventional receivership out of it, and it was so done. After that I actually turned over the funds to the Chicago Title and Trust Company. The account was banked then. That was approximately from January, 1934, until March. I couldn't be sure about the dates. It is about right that it was just about three months that they were really the receivers. Then it was turned over to the Central Republic Trust Company and the Chicago Title stepped out completely and I went on operating the property as before. I continued so doing until the 885 Court here took charge on the 17th day of May of this year.

There were thereupon offered in evidence as City National's Exhibit A-1 two documents dated October 26, 1936 and one of December 4, 1936 and having to do with the cost of putting a heating plant in the Arlington Hotel. On Mr. Woods' objection, Exhibit A-1 was excluded from evidence, to which an exception was taken.

Witness JOHN J. BICKEL, JR., being recalled by Mr. O'Brien, testified as follows:

*Direct Examination by Mr. O'Brien.*

City National Exhibit T for identification purporting to be the final report and account of the Receiver of Central Republic Trust Company was prepared by William L. O'Connell, Receiver of Central Republic. Igoe & Flaherty are his counsel. City National Bank and Trust Company did not prepare that account. The books of the Granada from which it was prepared were at the Granada Hotel. The records of the Trustee and all files relating to the account were in possession of William L. O'Connell. Charles H. Albers was his chief deputy in the case of Central Republic Trust Company. I don't know who presented the account to the Superior Court, but I assume Igoe & Flaherty.



I have heard testimony of the various witnesses 886 with respect to feasibility of changing the lobby space so that it might be used for tearoom, dining room or commercial purposes. As I testified before, the experience of hotel operators with commercial space in residential hotels is usually unfortunate. If hotels operate a restaurant or tearoom themselves, they generally lose money. It has been previously testified here that the Surf had a successful dining room. I had Mr. Hubbard call the operator of the Surf to determine how successful it was. It is losing money every month.

I am a director and treasurer of the Park Lane Hotel at Sheridan Road and Surf Street and we have had a dining room problem there for many years. We have tried to keep a tenant in the dining room that will serve satisfactory meals for us and we have waived the matter of rent entirely. She lost money and ultimately had to quit and we have been operating the dining room ourselves because of the demands of tenants. The hotel is managed by Mr. Skillman, a very experienced hotel operator, and experienced in catering, and the dining room lost money. It is my opinion that although the lobby has some waste space that that waste space because of the way it is laid out makes the hotel exceedingly attractive for apartment 887 guests. There are only 18 hotel rooms for transients in the hotel. The remainder of the apartments have kitchenettes or pullmans. That tenancy is permanent. These people for the most part cook their own meals, with the exception of perhaps one night a week or perhaps every two weeks, when they dine out.

Many of those people, as Mr. Woods undoubtedly knows, like to sit around the lobby and organize bridge games. They live at the Granada because of the type of apartments they get and because of the homelike atmosphere of the building and lobby. I firmly believe that entirely aside from zoning problems or restrictions as to what a mortgage Trustee can do in the way of remodeling, that commercial space in that hotel would be a failure and result in loss of income so far as the apartment tenants are concerned. I think the future will prove that my judgment on this is right.

I think the real value of the Granada Hotel property along with the personalty and furnishings is pretty close to \$375,000 or \$400,000.

I remember the approximately \$10,000 in funds on hand

that Mr. Woods asked me about as having been carried in the trustee in possession account for approximately 12 or 14 months. I testified that I had no personal knowledge of it but I did investigate at the bank. Mr. Beckett, who supervises corporate accounts, told me that your office had advised the Trustee that during the pendency of this other 77B case to disburse as little of that fund as possible so that the only disbursements that were made during that period were from the net income of the property and that was applied on taxes.

That money was invested for two or three days on April 1st in Governments. That is a common practice throughout all banks to avoid personal property taxes.

Calling attention to the morning on which I had a conversation with Mr. Woods, Mr. Clarke, and later Mr. Leonard, the only moneys that I can recall that Mr. Woods spoke of was this item in the so-called decree distribution account. The other items were, to the best of my knowledge, not mentioned.

The \$400 house fund was furnished by Central Republic as Trustee when it was in possession and the City National when it was in possession.

*Cross-Examination by Mr. Woods.*

The \$400 house fund was taken from the rentals of the Granada as was all of the money that the Trustee had in its trustee in possession account. I do not know without checking the records how much fire insurance the City National had been carrying on this property. I think we carried the full insurable value of the furniture and the full insurable value of the building. It is not a fact that one cannot carry full insurable value and that you have to take 80 per cent. I said that you could carry the full insurable value—not that we did. We excluded, of course, the foundations and basement and such other equipment as would not be inflammable. I have seen the insurance value estimated by our insurance department on the Granada but do not recall how much it is.

I have been to the Granada Hotel perhaps half a dozen times since Central Republic has been in possession. I have been in the Arlington Hotel about the same number of times. It has a relatively small lobby space. I didn't say that the tenants in the Arlington left because the lobby space is small. I say that the lobby space in the Granada is large and attractive. The occupancy of the Arlington

and Granada have been pretty close together. At one time the tenants of the Granada and Arlington had their tea parties and card parties together at the Granada. That was discontinued. To the best of my knowledge that was not the practice when the court Trustee took possession. We separated all of the services and attempted to discourage any intermingling of hotel operations. We carried in the house organ both "Granada Topics" and "Arlington Topics" right up to May, 1937. They contained a list of the guests and news about card parties and other 890 affairs. I believe we paid a part of the expense on the Granada Topics but how large a part Mr. Hubbart would know. I don't know. I doubt that the Arlington got the benefit of the extra space which was being used for these card parties, etc. I have never been particularly sold on the "Arlington Topics." Mr. Hall recommended it and I have never interposed any objection but I never thought that it did the Arlington any good. Our experience has proven that since the card parties, dances, etc. in the ballroom of the Granada were discontinued, it has not made a bit of difference in the Arlington. I don't think it would make any difference if the ballroom and all this lobby space were eliminated in the Granada. I don't see how you can eliminate it. It's there. I don't think it was of any great value to our Arlington tenants. Arlington showings are just as good now as they were before.

Hotels generally lose money when they try to run their own restaurants. In order to get a volume in a restaurant, you have to go on the outside. When you do so, you clutter your lobby space up with a lot of strangers—people who have no interest in the building—and your guests resent that and then they demand that the restaurant be discontinued or they will move. That sort of restaurant 891 business can really only exist by catering to parties and through outsiders and they are not desirable in a residential hotel.

We have had the Lakeview Women's Club there for 12 years, but it is an entirely different personnel than a dining room. I don't know whether women are the largest part of the patronage of dining rooms and tearooms.

I have been at the Spinning Wheel out in Hinsdale. There is no question but that it has been built up to its present popularity because of the people who took hold of it and made a success of it. I have heard that only two or three years ago, the Government had all that area closed up because of liquor in that neighborhood and that



these people went out there and built up a tremendous business, but you still have not shown me where that would benefit the Granada any because if you have \$75,000 a year in income from your hotel guests and your lobby is over-run by crowds every night, you are liable to lose your \$75,000 a year or a substantial part of it for maintaining a business that will pay you perhaps \$200 or \$300 a month.

I didn't say that the person who operates this property should just let the taxes pile up until there is \$40,000 or \$50,000 there and that if they try to make use of the 892 space that is there and have it produce and help pay the taxes that they will get in trouble. I have previously testified as to the amount we did pay on taxes. It ran into a very substantial figure—some \$30,000, I believe.

I recall that you had court Trustee's Exhibit B with you when you were talking with me and Mr. Leonard on the 27th of August. You showed it to me and Mr. Leonard. I don't remember that the notations in pencil in the corner of the last sheet were there at the time you talked to me. You may have called my attention to those items and said that the total was so much. I don't remember. Both Mr. Leonard and myself examined this document at that time.

Mr. O'Connell took over the closing up of the Central Republic Trust Company. He moved many of the files and records to his own offices. I think that the remnant of Central Republic Trust Company is still over there at 134 South La Salle. Up to the time that Mr. O'Connell took over the closing up of that company, City National were servicing the trust affairs of the Central Republic Trust Company. I had knowledge of and some authority with reference to that.

The final account of William L. O'Connell as receiver—City National Exhibit T—was not made by anyone connected with City National. The account was prepared 893 under the direction of and by employees of William L.

O'Connell. I have no doubt they filed the accounts as I had turned them over to Mr. O'Connell. The account is a restatement of the basic data which the City National had prepared. I don't know of my own knowledge whether we made any objection to anything that appears in that exhibit. I don't believe any objections were made. We accepted the report as entered in the Superior Court as final. So far as City National were concerned, there were no objections to be filed to the account. Those were figures that we had accumulated over a long period of time. They were Central Republic figures.



I never discussed with the guests or with the hostess or with other people there in the neighborhood the desirability of renting that space adjacent to the lobby on the first floor. I don't know of my own knowledge but I can assume from looking over the records that Mr. Mateer from the time he built those hotels in 1924 until he lost control of them somewhere near 1930 devoted a great deal of money and time to entertainment for guests of all the hotels in this space adjacent to the lobby. I think he prepared the lobby facilities as a central meeting point for the other two buildings and for others he expected to build. I 894 believe that during the time I operated the hotel people from the other hotels came over there and made use of that space for their card parties and other entertainment.

*Redirect Examination by Mr. O'Brien.*

The employer's portion of the social security tax is payable annually and the employee's portion monthly. It is the employer's portion that we are holding for the Government. Neither the manager nor other people about the hotel ever discussed with me the renting of the lobby space.

Beginning in March, 1934 when Central Republic went into possession of Granada as Trustee they caused books of account to be set up immediately and assumed, with the assistance of Mr. Hall, all of the responsibilities of direct management. I would like to correct something that Mr. Hall inadvertently said but thought that he was referring to the period when the Chicago Title and Trust Company was receiver. He indicated that during the entire period he has operated the entire property and had complete control. The fact is that he acted as assistant to Central Republic and then the City National and did not have complete control. The Central Republic and then the City National Bank had control. We had Mr. Hubbart assigned to that property. These were our own books which we opened up when we went into possession. The books were 895 set up in accordance with the modern hotel procedure. Our accounts were rendered monthly on both a cash receipts and disbursement basis and accrual basis. A monthly balance sheet was made which consolidated the affairs of the hotel itself with those balances that were in the bank—both the Central and the City. At all times it was possible to strike off a balance sheet and give the

financial condition of the hotel on immediate notice. We employed Barrow, Wade & Guthrie, certified public accountants, to set up the books and audit them monthly. We required Mr. Parker, the manager, to gather his deposits and have them picked up by Brinks Express and deposit them directly in the bank. The operating account in which those deposits were made was under the control of Mr. Hall and checks were counter-signed by either Mr. Hubbard or myself. All purchases were made on orders issued only by Mr. Hubbard, except for supplies like oil and other routine purchases. All disbursements had to be approved and checks counter-signed by either Mr. Hubbard or myself. Payrolls were accompanied by a payroll sheet. Individual checks were written direct to the employees. In general the system was as fool-proof as we could make it. That is approximately the same system that we use in all similar situations.

Mr. Hubbard, together with an organization in my 896 department, supervises exclusively hotel and furnished apartment buildings of which we have only a comparatively few. Most of the properties which we have are three-story walk-ups. Prior to this system we maintained books—ledger sheets which showed at all times the current cash position. Exactly the same records as Mr. Woods has produced here. A renting schedule and other items of policy were fixed by joint conferences with Mr. Parker, Mr. Hall, and Mr. Hubbard. The final approval was entirely in Mr. Hubbard's hands, but only after conference with the other two.

At the time we took possession as Trustee, the Chicago Title and Trust Company was not operating the property directly. They had stated that they would prefer to, but at that time we were operating it through Mr. Hall. I don't recall who was there when we took it over. I remember the Title Company saying that they wanted to operate the property direct but whether they had done so or not I don't remember. Mr. Hubbard would remember that.

The Real Estate Board in its schedule permits a management fee up to 6 per cent for operating properties of this type. We received 4 per cent including Mr. Hall's compensation. We did not make any extra charge for renting or any other service. I believe the compensation of the manager of the building was \$200 a month. The gross 897 of the building was about \$75,000 a year. Of course, the salary of manager and the other personnel is not

considered in the Real Estate Board's schedule of fees. I believe \$2400 a year is about  $3\frac{1}{2}$  per cent of \$75,000. By paying the trust company 4 per cent and paying the manager  $3\frac{1}{2}$  per cent I would figure our management cost was 4 per cent plus the personnel requirement of the hotel.

The Croydon Hotel was owned by Ben Cohen. He paid Mr. Hart from the St. Clair about \$7500 a year as manager of that hotel. I don't know whether he paid anyone else 4 per cent at that time, but Mr. Hart at that salary assumed a great deal of responsibility. The Croydon has about 200 units of apartments and transients. It is a combination transient and apartment hotel. That is a bit different from what we have at the Granada and the salary is quite a bit different too. The Croydon is about  $\frac{3}{4}$  transient. It is a different proposition. The dining room of the Croydon is leased—not operated. I think when you have a hotel property you first of all have to have a manager regardless of the management expense in addition to that. I think a hotel property will stand  $7\frac{1}{2}$  per cent, including the manager. The Real Estate Board rate as recommended is before taking the manager's service in consideration as a part of the operating expense. It excludes all operating personnel whether the manager, the maids, the housemen, or anything else.

898 The Court: "Do you know anyone who avails himself, if they have an option of availing themselves of it, of the Chicago Real Estate Board—do you know of any man in his right mind, not under legal disability who avails himself of that?"

The Witness: "Yes, I do."

The Court: "Well, who is it?"

The Witness: "Well, George Ortseifen of the Sheldrake, employs Louis Sudler & Company at either 4 or 5 per cent, I don't know which, in addition to the manager."

Witness resuming: I think that hotel is at Windsor and Clarendon. He does that because he does not want the responsibility of all of the buying and so on. He also has plenty to do checking the affairs of the house and the operation and he does not want the money spent by him. He wants to have direct control of it by somebody who knows where it is going. I have no doubt there are some others. If I were given time, I am sure I could locate some.

*Recross Examination by Mr. Woods.*

I did not say that Mr. Hrbbart did not buy the oil. I don't know whether he handled that direct or not or

whether he had Mr. Parker do that. What I meant was routine purchases. When the source of supply was once determined and the price, the ordering of the oil was merely the matter of a telephone call.

399 Looking at court Trustee's Exhibit B I cannot say how it happens that as much was spent for oil between January and May, 1937 as was spent in the entire year of 1935, without seeing all of the vouchers, but I presume there were some carry-over bills from 1936 because it was on a cash receipts and disbursement basis. It is entirely possible that they spent more for 1936 than they did for 1935 because in 1936 the heating season was entirely different than in 1935—between 15 and 18 per cent. An explanation of that difference is not that it was just a matter of a phone call and that I paid no attention to it. I don't know how full the tanks were kept but I know that Mr. Parker and the engineer checked every bill. I do not think that it is true when you keep tanks full of oil that the oil settles down and forms layers in the tank. They have to be cleaned out at regular intervals.

The boilers were not in bad condition when it was turned over to you. There is nothing unusual about the fact that last spring at the end of the heating season engineers had to clean out the boilers and make repairs. When the oil reaches the building the quantity is checked.

Court Trustee's Exhibit O for identification is the kind of daily report we got from the hotel. I did not get these.

Mr. Hubbart did. We received them each day for the 900 preceding day's business. We knew by afternoon of any day the exact financial situation at the hotel at the close of business the day before. We, no doubt, knew on May 18 of this year exactly the situation at the close of business on May 17. I didn't say that we could at all times determine the balance on immediate notice and said that within a very short time we could at any time draw off a balance sheet, if necessary. You don't close your books every day—not until the end of the month. I have no doubt that you don't do that either.

The sheet shows the exact situation every day as far as the cash account is concerned, but that sheet does not show the liabilities. By liabilities I mean the operating expenses accruing from day to day—bills which have not been billed yet. We didn't incur any bills after the 17th of May. I am talking about prior to that time. It was necessary to wait from the 17th of May until the 25th of August to get in these additional bills. We called for the bills immedi-



ately. I think we have been over that before. There were numerous conversations between you and Mr. Hubbard, between you, and Mr. O'Brien, and it took Barrow, Wade, & Guthrie a considerable period due to vacations and so on to get the audit up. It was not deliberate stalling. It was hard to get things done in the summer time.

901 Barrow, Wade & Guthrie gave us an audit for the month of May on the 1st of June but that had to be consolidated with all previous months.

GARY YOUNG called as a witness testified:

*Direct Examination by Mr. O'Brien.*

I live in Evanston and am General Manager of the contract division of Kroehler Manufacturing Company. I was associated with that company in 1933 and have been since 1928. That company manufactures both high-grade and medium-grade furniture case goods, which is bedroom and dining room. Prior to 1928 I was with Marshall Field for nine years and two years in business for myself, always furnishing hotels. I was familiar with the market prices of furniture during 1933, both in buying and selling. I went through the Granada Hotel during July, 1933. Mr. Murphy of Chicago Seating Company accompanied me and in going through the hotel, we had Mr. Parker through the first two floors and the housekeeper, Mrs. Gahland, go through the balance of the rooms to identify merchandise that might belong to tenants. Excluding tenants' furniture and property and excepting mechanical equipment, Mr. Murphy and I made an inventory of all the furniture, furnishings, and equipment in the Granada, but included all movable furniture and also included the kitchen 902 and china cases, in-a-dor beds and carpeting and ozite in the premises. We set the inventory down on paper and determined the value of all the property in place at that time. We based its value on cost of replacement in 1933 less its depreciation. We furnished Mr. Edward Hall a report. I have a copy of the report with me. Both Mr. Murphy and myself made this inventory and appraisal because the bank called Mr. Murphy and I have no connection with the Chicago Seating Company at all and Mr. Murphy called me in as a co-appraiser on Granada so that the appraisal is a joint appraisal of Mr. Murphy and myself.

City National's Exhibit A-3 for identification is a true and correct executed copy of that appraisal and inventory.

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 420, inclusive, contain a true copy of volume I of the printed record printed under my supervision and filed on the fifteenth day of November, 1939 in the following entitled causes:

Causes Nos. 6986, 7060.

In the Matter of Granada Apartments, Inc., Debtor.

City National Bank and Trust Company of Chicago,  
etc., *et al.*,

*Appellants,*

*vs.*

Weightstill Woods, Court Trustee, *et al.*,

*Appellees,*

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 23rd day of July, A. D. 1940.

Kenneth J. Carrick,

(Seal)

*Clerk of the United States Circuit Court  
of Appeals for the Seventh Circuit.*